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Proceeding/Serial No: 91175319

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Title: Motion for summary judgment

Part 1 of 1



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Motion for Summary Judgment (23 pgs);

Declaration of Michelle Hirth I/S/O Opposer Intuitive Surgical, Inc.'s Motion for Summary Judgment (13 pgs);

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| INTUITIVE SURGICAL, INC.,           |                                |
|-------------------------------------|--------------------------------|
| Opposer,                            | ) Opposition No. 91175319      |
|                                     | ) Serial No. 78/728,,786       |
| DAVINCI RADIOLOGY ASSOCIATES, P.L., | Published: December 19, 2006 ) |
| Applicant.                          | )<br>)                         |

#### MOTION FOR SUMMARY JUDGMENT

Opposer Intuitive Surgical, Inc. ("Opposer") hereby moves the Trademark Trial and Appeal Board (the "Board") for summary judgment in its favor as to this Opposition Proceeding and hereby submits its memorandum brief in support thereof. Opposer submits concurrently herewith the Declaration of Michelle J. Hirth ("Hirth Decl.") in support of the motion for summary judgment pursuant to 37 Code of Federal Regulations ("C.F.R.") § 2.20.

#### I INTRODUCTION

Applicant DaVinci Radiology Associates, P.L.'s ("Applicant") mark DAVINCI DIAGNOSTIC IMAGING & Design ("Applicant's Mark") is confusingly similar to Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) (singly "Opposer's Mark" and collectively "Opposer's Marks"), and Applicant's Mark should be denied registration on the Principal Register.

First, it is undisputed that Applicant's Mark consists of Opposer's Mark DA VINCI as its first term with the addition of the disclaimed term "DIAGNOSTIC[,]" the term "IMAGING" and



certain design elements. The "Da Vinci" terms in the parties' respective marks are virtually identical in appearance and are identical in sound and meaning, both referring to and connoting the well-known Renaissance man Leonardo Da Vinci. It is further undisputed that the term "Da Vinci" is arbitrary and distinctive as applied to Opposer's goods and Applicant's services offered under the respective marks. As the dominant and distinctive term in both parties' marks are identical, the commercial impressions of the parties' respective marks are similar.

Second, it is undisputed that Opposer's marks DA VINCI is registered for use in association with computerized surgical systems and associated parts and instruments, and that the goods offered under Opposer 's Marks include a master control, an immersive video display, camera processing equipment and system software, all used to perform minimally-invasive robotic surgery, including the rendition of an image of the surgical field. It also is undisputed that the services offered under Applicant's Mark are medical diagnostic imaging services.

Specifically, Applicant offers magnetic resonance imaging ("MRI"), computed tomography ("CT") scans, positron emission tomography ("PET") scans and digital mammography. Each of these diagnostic imaging techniques involves the rendition of an image of the human body and most of these techniques are computerized. It is undisputed that both Opposer's goods and Applicant's services are in the medical and health care field. The parties' goods and services offered under their respective marks utilize related technologies and occupy the same arena, and therefore are related under a likelihood of confusion analysis.

Third, it is undisputed that neither Opposer's registrations nor Applicant's application include any restrictions as to trade channels or marketing channels or as to consumers of the parties' respective goods and services. As a matter of law, therefore, the parties' goods and services are presumed to be promoted via all commonly used marketing channels and to all usual consumers of such goods and services. Both Opposer's goods and Applicant's services would in

the normal course be marketed via solicitation of physicians' and surgeons' associations, through brochures and advertisements targeting surgeons and other physicians, and through the Internet. In fact, in this case, both Opposer and Applicant market their goods and services via brochures and Internet websites. Further, it is undisputed that consumers of both Opposer's goods and Applicant's services offered under their respective marks are physicians, surgeons and other health care professionals.

Given the similarity of the parties' marks, the relatedness of the parties' goods and services offered under those marks and the overlap of the marketing channels and consumers of the goods and services, confusion as to source is likely here. This Board should grant Opposer's motion for summary judgment as a matter of law.

#### II. UNDISPUTED FACTS

#### A. Procedural History.

Applicant filed its application for registration of DAVINCI DIAGNOSTIC IMAGING & Design on October 7, 2005. *See* Applicant's application for registration of DAVINCI DIAGNOSTIC IMAGING & Design, Application Serial No. 78/738,786, Response to Office Action pertaining to Application Serial No. 78/738,786 and Notice of Publication, collectively attached as Composite Exhibit A to the Hirth Decl. On December 19, 2006, Applicant's Mark was published for opposition in the *Official Gazette*. *See id*.

Opposer initiated this Opposition Proceeding on January 18, 2007. Applicant failed to file a timely answer and the Trademark Trial and Appeal Board (the "Board") issued a notice of default on April 9, 2007. Applicant filed a motion to set aside the notice of default and the

Applicant's application and corresponding U.S. Patent & Trademark Office file are automatically of record in this Opposition Proceeding. *See* TMBP at § 428.05(a); 37 C.F.R. § 2.122(b).

parties stipulated to an extension of time for Applicant to answer the Notice of Opposition. On or about April 30, 2007, Applicant filed its Answer. Hirth Decl. at ¶¶ 5-7.

On July 12, 2007, the Board reset the Discovery and Testimony Periods in this

Proceeding, continuing the close of the Discovery Period to November 13, 2007 and the close of

Plaintiff's/Opposer's Testimony Period to February 11, 2008. On October 17, 2007, the parties
agreed to extend the Discovery and Trial Periods to allow the parties to complete additional
discovery, and Opposer filed a consented motion to extend. The Board granted the consented
motion and reset the close of the Discovery Period to December 13, 2007 and of

Plaintiff's/Opposer's Testimony Period to March 12, 2008. On or about February 8, 2008, the
parties agreed to extend the Testimony Periods in this action to allow Applicant additional time
to provide supplemental responses to discovery before the opening of Opposer's Testimony

Period. Pursuant to a consented motion, the Board reset Plaintiff's/Opposer's Testimony Period
to close on April 11, 2008. Hirth Decl. at ¶ 8-10.

During the Discovery Period, Opposer served on Applicant two sets of interrogatories, one set of requests for production of documents and things and one set of requests for admission. Hirth Decl. at ¶ 11; Opposer's First Set of Requests for Production of Documents and Things to Applicant, Opposer's First Set of Interrogatories to Applicant, Opposer's First Set of Requests for Admission to Applicant and Opposer's Second Set of Interrogatories to Applicant, collectively attached to the Hirth Decl. as Composite Exhibit B. Applicant served written responses and produced documents responsive to these discovery requests in November 2007 and in January, February and March 2008. Hirth Decl. at ¶¶ 13, 15 & 16; Applicant's Responses to Opposer's First Set of Requests for Production of Documents and Things to Applicant and Applicant's Responses to Opposer's First Set of Interrogatories to Applicant collectively attached as Composite Exhibit D to the Hirth Decl.; Applicant's Responses to Opposer's First Set of

Requests for Admission to Applicant and Applicant's Responses to Opposer's Second Set of Interrogatories to Applicant collectively attached as Composite Exhibit F to the Hirth Decl.; Applicant's Supplemental Responses to Opposer's First Set of Interrogatories to Applicant attached as Exhibit G to the Hirth Decl.

Also during the Discovery Period, Applicant served on Opposer one set of interrogatories and one set of requests for production of documents and things. Hirth Decl. at ¶ 12. See

Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Requests for

Production of Documents and Things to Opposer collectively attached to Hirth Decl. as

Composite Exhibit C. Opposer served responses, including responsive documents, to these

discovery requests on November 26, 2007 and December 11, 2007. Hirth Decl. at ¶ 14;

Responses to Applicant's First Set of Interrogatories to Opposer and Responses to Applicant's

First Set of Requests for Production of Documents and Things to Opposer collectively attached

as Composite Exhibit E to the Hirth Decl.

Opposer brings this motion for summary judgment prior to the opening of Plaintiff's/Opposer's Testimony Period pursuant to Federal Rule of Civil Procedure ("FRCP") 56 and 37 C.F.R. § 2.127(e)(1).

#### B. Opposer's Marks and Goods.

Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) (collectively, "Opposer's Marks") are used with computerized surgical systems and associated parts and instruments. Specifically, Opposer's mark DA VINCI is the subject of U.S. Trademark Registration No. 2,628,871 in the name of Opposer, Application Serial No. 75/982,190 filed on March 19, 1999, and registered on October 1, 2002 for use with:

Computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a

unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers; a full line of FDA Classes I and II exempt surgical instruments, namely, scalpels, scalpel blades and handles. staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners.

Hirth Decl. at ¶ 17; two copies of a certified copy of U.S. Trademark Registration No. 2,628,871, attached as Exhibit H to Hirth Decl. Opposer has continuously offered and sold computerized surgical manipulation systems and associated parts and instruments under the DA VINCI mark since at least as early as July 7, 2000. Hirth Decl. at ¶ 18; Response to Interrogatory No. 6 of Responses to Applicant's First Set of Interrogatories to Opposer.

Opposer's mark DA VINCI S HD SURGICAL SYSTEM (Stylized) is the subject of U.S. Trademark Application Serial No. 76/665,748 filed on September 8, 2006 in the name of Opposer for use in connection with:

Computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus,

measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers, surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners.

Hirth Decl. at ¶ 19; a copy of U.S. Trademark Application Serial No. 76/665,788 and the official filing receipt therefore are collectively attached as Composite Exhibit I to Hirth Decl. Opposer has continuously offered and sold computerized surgical manipulation systems and associated parts and instruments under the DA VINCI S HD SURGICAL SYSTEM (Stylized) mark since at least as early as January 2006. Hirth Decl. at ¶ 20; Response to Interrogatory No. 6 of Responses to Applicant's First Set of Interrogatories to Opposer.

Opposer's goods offered under the Marks are used with computerized surgical systems for minimally invasive, robotic-assisted surgery used in a wide variety of surgical applications including but not limited to cardiac, urology, general surgery, thoracic, gynecologic and pediatric surgical procedures. Hirth Decl. at ¶ 21; Responses to Interrogatory Nos. 3 & 4 of Responses to Applicant's First Set of Interrogatories to Opposer. Goods under Opposer's Marks are offered to hospitals, surgical centers and physicians primarily through a direct sales force. Consumers of Opposer's goods offered under its Marks are medical and health care professionals, including surgeons, doctors, hospital administrators and administrators of outpatient surgical centers. Hirth Decl. at ¶ 22; Responses to Interrogatory Nos. 13 & 16 of Responses to Applicant's First Set of Interrogatories to Opposer.

Opposer's goods are promoted under its Marks via trade shows, press releases, workshops for, training and other education of practitioners offered and presented by Opposer, attendance at and presentations by Opposer at meetings of medical associations and societies, and via Internet-based advertising including Opposer's Internet websites www.intuitivesurgical.com,

www.davincisurgery.com and www.davinciprostatectomy.com. Hirth Decl. at ¶ 23; Responses to Interrogatory Nos. 5 & 13 of Responses to Applicant's First Set of Interrogatories to Opposer.

#### C. Applicant's Mark and Services.

In 2002, a member of Applicant "developed the concept of a high-end imaging center that emphasized state-of-the-art imaging in an elegant setting" and sought a trade name that "had public recognition, connoted a high level of sophistication and intelligence, and would be memorable for its dissonance in the context of a medical imaging center." Hirth Decl. at ¶ 24; Response to Interrogatory No. 2 of Applicant's Responses to Opposer's First Set of Interrogatories to Applicant. In late 2002, Applicant chose the term "DaVinci[.]" *Id.* In November 2003, Applicant's counsel performed a search using the U.S. Patent & Trademark Office's Trademark Electronic Search System ("TESS") for the terms "DaVinci" and "Da Vinci[.]" As a result, Applicant learned at that time of Opposer's registration of DA VINCI. *Id.* 

Nonetheless, on August 1, 2005 Applicant exclusively licensed Applicant's Mark to Medical Specialists of the Palm Beaches ("MSPB"), which immediately began to use the Mark in association with imaging services that include magnetic resonance imaging ("MRI"), computed tomography ("CT") scans, positron emission tomography ("PET") scans, and digital mammography. Hirth Decl. at ¶ 25; Supplemental Response to Interrogatory No. 4 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant; License Agreement between Applicant and MSPB, attached as Exhibit J to Hirth Decl. On October 7, 2005, Applicant filed with the U.S. Patent & Trademark Office an application for registration of Applicant's Mark based upon use of the mark in interstate commerce at least as early as August 1, 2005 with "medical diagnostic imaging services." Hirth Decl. at ¶ 26. See Exhibit A to Hirth Decl.; Supplemental Response to Interrogatory No. 6 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant. MSPB refers to

the facility at which these services are provided as the "DaVinci Diagnostic Imaging Center[,]" "DaVinci Imaging Center" or "DaVinci". Hirth Decl. at ¶ 27. See Brochures advertising services offered under Applicant's Mark, attached as Composite Exhibit K to Hirth Decl.

MSPB markets services under Applicant's Mark via brochures and its Internet websites www.mspb.md and www.davinci-imaging.com. Hirth Decl. at ¶¶ 27-29 and Exhibit K thereto; Supplemental Response to Interrogatory Nos. 5 & 11 of Applicant's Supplemental Responses to Opposer's First Set of Interrogatories to Applicant; pertinent pages of the davinci-imaging.com and mspb.md Internet websites, collectively attached as Composite Exhibits L & M to the Hirth Decl.

Consumers of services offered under Applicant's Mark are medical patients and their physicians, including surgeons. Applicant asserts "to the best of its knowledge and belief, [that] MSPB's consumers are medical patients." Response to Interrogatory No. 16 of Applicant's Responses to Opposer's First Set of Interrogatories to Applicant. Medical patients, however, do not generally order their own diagnostic imaging tests. Instead, such tests are ordered by and the results provided to the physicians of those patients to aid in the diagnosis of disease, illness or injury, in devising medical treatment plans and in treating patients. On its Internet website www.mspb.md, in the introduction to its DaVinci Diagnostic Imaging Center and the diagnostic imaging services offered under Applicant's Mark, MSPB states: "[t]he Medical Specialists of the Palm Beaches operates two state-of-the-art Diagnostics centers that provide you and your physician with one comprehensive source for diagnostics, medical testing and laboratory procedures." See Exhibit L to Hirth Decl. Further, in its brochures for services offered under Applicant's Mark, MSPB states that the services "give physicians more complete information[,]" allow[] doctors to make more precise diagnoses[,]" "[a]id[] doctors in determining the proper

course of treatment" and " [h]elp[] guide surgeons to the exact location of the cancer[.]" See Exhibit K to Hirth Decl.

#### III. ARGUMENT

Resolution of Board proceedings on summary judgment saves time, cost and judicial resources, and is therefore encouraged. *University Book Stores v University of Wisconsin Board of Regents*, 33 U.S.P.Q.2d 1385, 1389 (TTAB 1994). To prevail on a motion for summary judgment, the moving party has the burden of establishing that there is "no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law." Federal Rule of Civil Procedure ("FRCP") 56(c); *id.* at 1389. When ruling on a motion for summary judgment, the Board must construe all factual disputes in the light most favorable to the non-movant. *Capital Speakers Inc. v Capital Speakers Club of Washington D.C. Inc.*, 41 U.S.P.Q.2d 1030, 1034-35 (TTAB 1996) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

While no litmus test exists for determining whether likelihood of confusion exists, the Board looks to several factors. See In re E.I. DuPont deNemours & Co., 476 F.2d 1357, 1361 (CCPA 1973) (enumerating thirteen factors). Several of these factors are salient here: (1) the similarity of the marks; (2) the similarity or relatedness of the goods and services offered under the parties' respective marks; (3) the channels through which the parties' goods or services are marketed; (4) the consumers of the parties' goods and services; and (4) the intent or knowledge of the junior user when it adopted its mark. Id.

#### A. Opposer has Protected Rights in the DA VINCI Marks.

Opposer has rights in the DA VINCI mark by virtue of its registration and use of the mark. Registration of a trademark on the Principal Register is *prima facie* evidence of the validity of the mark, the registrant's ownership of the mark and the registrant's exclusive right to use the mark in commerce. 15 U.S.C. § 1057(b); *Russell v. Caeser*, 62 U.S.P.Q 1125, 1127

(N.D. Cal. 2001). Such registered marks "should be afforded the utmost protection." *Russell*, 62 U.S.P.Q. at 1127. DA VINCI has been registered in the name of Opposer since October 1, 2002 and has been in continuous use since at least January 7, 2000. *See* true and correct certified copy of Certificate of Registration of DA VINCI, U.S. Trademark Registration No. 2,628,871, attached as Exhibit H to Hirth Decl. Further, Opposer's registration of DA VINCI is properly made of record in this Proceeding<sup>2</sup> and, therefore, Opposer's priority of rights is not an issue as to the DA VINCI mark or the goods covered by its registration. *See Barbara's Bakery Inc. v. Landesman*, 82 U.S.P.Q.2d 1283, 1285-86 (TTAB 2007).

Opposer also has protectable rights in its unregistered mark DA VINCI S HD SURGICAL SYSTEM (Stylized). A party has protectable rights in an unregistered trademark if it has acquired ownership rights in the mark and the mark is inherently distinctive or has acquired secondary meaning. *Glow Industr., Inc. v. Lopez*, 252 F. Supp.2d 962, 976-77 (C.D. Cal. 2002). The DA VINCI S HD SURGICAL SYSTEM (Stylized) mark has been in continuous use in interstate commerce since at least January 2006 and Opposer filed an application for registration of the mark on September 8, 2006. Hirth Decl. at ¶¶ 19-20 and Exhibit I thereto. As described below, the "Da Vinci" term is arbitrary<sup>3</sup> and therefore inherently distinctive as used with computerized surgical systems and their component parts and instruments. Accordingly, Opposer has priority rights in the mark DA VINCI S HD SURGICAL SYSTEM (Stylized).<sup>4</sup>

<sup>&</sup>lt;sup>2</sup> The certified copy of Opposer's registration of DA VINCI was issued by the U.S. Patent & Trademark Office on March 5, 2008 and shows the status and title of the mark in compliance with to TMBP § 528.05(d) and 37 C.F.R. § 2.122(d)(2).

<sup>&</sup>lt;sup>3</sup> An arbitrary mark is a known word or term used in an unexpected or uncommon way. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1372-73 (Fed. Cir. 2005) (citing *Nautilus Group, Inc. v. Icon Health & Fitness, Inc.*, 372 F.3d 1330, 1340 (Fed. Cir. 2004)).

<sup>&</sup>lt;sup>4</sup> Opposer bases this Opposition Proceeding on its rights in both its DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) marks. However, solely for purposes of simplicity, Opposer limits its discussion herein to its DA VINCI mark only.

#### B. The Parties' Marks are Confusingly Similar.

In evaluating the likelihood of confusion, one must first look to the marks themselves for similarities in appearance, sound and meaning. *Al-Site Corp. v. VSI Int'l Inc.*, 50 U.S.P.Q.2d 1161, 1175 (Fed. Cir. 1991) (citing *E. Remy Martin & Co. S.A. v. Shaw-Ross Int'l Imports, Inc.*, 756 F.2d 1525, 1531 (11th Cir. 1985)); *In re E.I. DuPont deNemours & Co.*, 476 F.2d at 1359; *In re Paper Doll Promotions, Inc.*, 54 U.S.P.Q.2d 1660, 1667 (TTAB 2007). Although no single factor predominates from case to case, similarity of the marks is a key factor and alone may suffice to defeat a potential registration. *See In re Lamson Oil Co.*, 6 U.S.P.Q.2d 1041, 1042 n.4 (TTAB 1987); *Interlego AG v. Abrams/Gentile Entm't, Inc.*, 63 U.S.P.Q.2d 1862, 1863 (TTAB 2002). Similarities of marks are weighed more heavily than differences. *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1205-06 (9th Cir. 2000).

In determining the similarities of trademarks, the marks must be compared in their entireties. *MarCon, Ltd. v. Avon Products, Inc.*, 4 U.S.P.Q.2d 1474, 1476 (TTAB 1987).

However, the law is clear that the Board should give the greatest weight to the dominant features of the parties' marks. *Plantronics Inc. v. Starcom Inc.*, 213 U.S.P.Q. 699, 702 (TTAB 1982) ("similarity of dominant features must be accorded great weight"). *See also Hewlett Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1266 (Fed. Cir. 2002) (citing *In re National Data Corp.*, 753 F.2d 1056, 1058 (Fed. Cir. 1985) (the Patent & Trademark Office may give less weight to a descriptive or generic portion of a mark) and *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 710 F.2d 1565, 1570 (Fed. Cir. 1983) (it is permissible for the Patent & Trademark Office to give greater force and effect to a dominant feature of the marks)).

1. <u>The Dominant Terms of the Parties' Respective Marks are Identical in Their Appearance, Sound and Meaning.</u>

The dominant portion of a composite mark is identified in a number of ways. First, descriptive terms are not deserving of trademark protection. Therefore, in a composite mark containing both descriptive and non-descriptive terms, the non-descriptive portion is considered dominant. Hewlett Packard Co., 281 F.3d at 1267 (the disclaimed term "technologies" is descriptive and, therefore, PACKARD is the dominant and distinguishing element of the applicant's mark PACKARD TECHNOLOGIES); In re Dixie Restaurant, Inc., 105 F.3d 1405, 1406-07 (Fed. Cir. 1997) (DELTA is the dominant portion of the mark THE DELTA CAFÉ where "café" is descriptive of the applicant's restaurant services). Second, the first part of a composite mark is the most likely to be impressed upon the mind of the consumer and is most often dominant. Presto Products Inc. v. Nice-Pak Products Inc., 9 U.S.P.O.2d 1895, 1897 (TTAB 1988) (the term KID is dominant in the marks KIDWIPES and KID STUFF). Third, a portion of a composite mark that consumers are more likely to remember and use as indicating the source of the goods or services or by which the services are generally referred in the industry is considered the dominant portion of the mark. Price Candy Co. v. Gold Medal Candy Corp. 220 F.2d 759, 761 (CCPA 1955).

"DAVINCI" is the dominant and only non-descriptive term in Applicant's Mark and is virtually identical to Opposer's Mark DA VINCI. First, the term DAVINCI is arbitrary as used with medical diagnostic imaging services. "DaVinci" does not describe or even suggest a characteristic, function or component of such services. Conversely, "diagnostic" describes the function or purpose of the services offered under Applicant's Mark – that is, they are intended, at least in part, to diagnose illnesses, injuries and other medical ailments – and, as a result, has been disclaimed by Applicant. Exhibit A to Hirth Decl.; *Hewlett Packard Co.*, 281 F.3d at 1267.

Similarly, the term "imaging" also is descriptive of Applicant's services. As indicated in the identification of goods in the Application, the services offered are "imaging services." Exhibit A to Hirth Decl. Moreover, the specific services offered include MRIs, CT scans, PET scans and digital mammography. Each of these testing methods is considered an imaging technique and produces an image of body structures. Hirth Decl. at ¶ 30 and Exhibits G, L & M thereto. "Imaging" describes a quality of the services offered under Applicant's Mark.

Second, DAVINCI is the first term in Applicant's Mark and the sole term comprising Opposer's Mark. Consumers are therefore more likely to remember the DAVINCI term and to use it to refer to Applicant's services. *Presto Products Inc.*, 9 U.S.P.Q.2d at 1897. Moreover, Applicant's licensee refers in its promotional material to the diagnostic imaging center at which services are offered under Applicant's Mark as "DaVinci[.]" Hirth Decl. at ¶ 27 & 29 and Exhibits K and M thereto. Consumers are likely, and encouraged, to associate the singular term "DaVinci" with Applicant's services.

The dominant term of Applicant's Mark, DAVINCI, is identical to Opposer's Mark in appearance, sound and meaning. First, the number of letters and the order of the letters are identical in both terms. The presence of a space between "DA" and "VINCI" in Opposer's Mark and the lack of such a space in Applicant's Mark are unlikely to affect the similarity of these terms in the minds of consumers. Second, the terms each have three syllables and have the same pronunciation. Third, these terms are identical in meaning and connotation. "Da Vinci" is the commonly known surname of the famous 16th Century artist, scientist, innovator and Renaissance man Leonardo Da Vinci. Leonardo Da Vinci is well-known not just for his art but also for his inventions and scientific theories. He is commonly known to have made precise scientific observations and, among other things, for his studies of the skeleton, organs, blood circulation and action of the eye. He invented numerous machines and is known for his widely

varying interests and talents. Hirth Decl. at ¶ 33 and Exhibit O thereto. The term "Da Vinci" therefore is arbitrary as applied to surgical systems and to medical diagnostic imaging services. Instead, the name "Da Vinci" connotes the classic Renaissance man and embodies artistry, scientific innovation, precision, intelligence, sophistication and versatility, particularly when used in association with goods or services in the medical field where patients and physicians seek the most advanced and sophisticated technologies available. Accordingly, Opposer's Mark and the dominant term of Applicant's Mark are identical in appearance, sound and meaning.

2. The Parties' Respective Marks in Their Entireties are Similar in Appearance, Sound and Meaning.

The parties' respective marks also are similar when viewed in their entireties. The test for likelihood of confusion "is not whether the marks can be differentiated when subjected to a side-by-side comparison but, rather, whether they create the same general overall impression[.]" *Lisa Frank, Inc. v. Impact Int'l Inc.*, 799 F. Supp. 980, 998 (D. Az. 1992). Confusing similarity does not require that every word of a trademark be appropriated; it requires only that enough of a mark is used by a junior user to confuse the public. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 314 F.2d 149, 161 (9th Cir.), *cert. denied*, 374 U.S. 830 (1963). "The general rule is that a subsequent user may not avoid likelihood of confusion by appropriating another's entire mark and adding descriptive or non-distinctive matter to it." *Electropix v. Liberty Livewire Corp.*, 178 F. Supp.2d 1125, 1132 (C.D. Cal. 2001) (quoting Thomas J. McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 23.50 (4th ed. 2005).

In their entireties, DA VINCI and DAVINCI DIAGNOSTIC IMAGING & Design differ in appearance and sound. Opposer's Mark consists of two words with a total of three syllables

<sup>&</sup>lt;sup>5</sup> In fact, Applicant chose the term "DaVinci" in part to connote a high level of sophistication and intelligence. Hirth Decl. at ¶ 24; Response to Interrogatory No. 2 of Applicant's Responses to Opposer's First Set of Interrogatories to Applicant.

and Applicant's Mark consists of three words, with ten syllables and a design element.

Nonetheless, the marks are similar in commercial impression.

The presence of the strongly distinctive term DA VINCI as the first or only word of the parties' marks renders them similar, especially in light of the descriptiveness of the other terms in Applicant's mark. See Palm Bay Imports, Inc., 396 F.3d at 1372-73; Hewlett Packard Co., 281 F.3d at 1266-67 (PACKARD TECHNOLOGIES and HEWLETT PACKARD differ in sound and appearance but convey similar commercial impressions); Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175, 1177 (9th Cir. 1988) (the use of identical terms as the lead word in two marks could foster confusion among consumers). Further, although the design element of Applicant's Mark may be significant as to the appearance of the mark, it does not affect the sound of the mark or its meaning. Consumers are more likely to remember and use the term "DaVinci" alone to refer to services offered under the Mark. In re Association of the United States Army, 85 U.S.P.Q.2d 1264, 1261 (TTAB 2007) (UNITED STATES ARMY is the dominant feature regardless of design element because it is a well-recognized designation).

In *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, the Federal Circuit considered the similarity of the applicant's mark VEUVE ROYALE and the opposer's marks VEUVE CLICQUOT PONSARDIN, VEUVE CLICQUOT and VEUVE CLICQUOT & Design, all used in association with champagne or sparkling wine. 396 F.3d at 1369. The Court determined that the term VEUVE (meaning widow) was dominant in both parties' marks because VEUVE is arbitrary as applied to champagne and sparkling wine and is the first term in the marks, "Royale" in the applicant's mark is laudatory and less source identifying, and VEUVE is the term around which the opposer based its marketing efforts. *Id.* at 1372. The Court held that the presence in both parties' marks of the distinctive term VEUVE renders the parties' marks confusingly similar. *Id.* at 1373.

As in *Palm Bay Imports, Inc.*, DA VINCI is arbitrary as applied to the parties' respective goods and services and is the first and dominant feature of Applicant's Mark, particularly in light of the descriptiveness of its other terms. Further, in its brochures and on its Internet websites, Applicant's licensee refers to its facility and the services offered there as "DaVinci" reinforcing among consumers an association of the sole term DAVINCI with its services. Hirth Decl. at ¶¶ 27 & 29 and Exhibits K & M thereto. Viewed in their entireties, Applicant's Mark provides a similar commercial impression as and is, as a matter of law, confusingly similar to Opposer's Mark.

#### C. The Goods and Services Offered Under the Parties' Respective Marks are Related.

Similarity of the goods covered by Opposer's registration and the services covered by Applicant's application is the second key factor in the *DuPont* likelihood of confusion analysis. *See Hewlett Packard Co.*, 281 F.3d 1261; *Interlego*, 63 U.S.P.Q.2d at 1863; *In re DuPont deNemours & Co.*, 476 F.2d at 1361; *In re Paper Doll Promotions Inc.*, 84 U.S.P.Q.2d at 1667. In considering the similarity of the goods and services:

It is settled that it is not necessary that the respective goods be identical or even competitive in order to support a finding of likelihood of confusion. That is, the issue is not whether consumers would confuse the goods themselves, but rather whether they would be confused as to the source of the goods. It is sufficient that the goods be related in some manner, or that the circumstances surrounding their use be such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods.

Barbara's Bakery Inc., 82 U.S.P.Q.2d at 1286. A senior user can preclude junior use of the same or similar mark for any goods which might reasonably be assumed to emanate from the senior user in the normal expansion of its business under the mark. Eikonix Corp. v. C.G.R. Medical Corp., 209 U.S.P.Q. 607, 613 (TTAB 1981). For such preclusion there need only be a

relationship between the goods or services set forth in the application and registration or a relationship between their respective channels of distribution or classes of actual or potential consumers such that consumers will mistakenly assume the senior user has "bridged the gap" and is the source of the applicant's services. *Id.* "The trademark laws protect senior users' interest in being able to enter a related field at some future time." *Id.* (quoting *American Assn for the Advancement of Science v. The Hearst Corp.*, 206 U.S.P.Q. 605 (D.C. D.C. 1980)). *See also Kabushiki Kisha Hattori Seiko v. Satellite Int'l Ltd.*, 29 U.S.P.Q.2d 1317, 1319 (TTAB 1991) (while watches and shoes are non-competing goods, they are "not so remote as to foreclose the possibility that they come from the same source").

In *Eikonix Corp.*, the petitioner in a Cancellation Proceeding held a prior registration of the mark EIKONIX for products and services related to optics and photography. 209 U.S.P.Q. at 608. The respondent held a junior registration for ICONEX for a medical x-ray television camera and related control unit. *Id.* The Board determined that a relationship existed between the technique and equipment used by the petitioner to study and evaluate photographic images, on the one hand, and the equipment necessary to perform the same function for images obtained by x-ray equipment, on the other hand. *Id.* at 614. The Board noted that "[i]t would be a natural expansion of petitioner's activities in designing and manufacturing equipment for recording, analyzing, and measuring images to move into the field of x-ray imagery." *Id.* 

In this case, it is undisputed that Opposer's goods are computerized surgical systems. It is undisputed that these systems include a master control, an immersive video display, camera processing equipment and system software, among other things. Hirth Decl. at ¶¶ 17-20 and Exhibits H & I thereto. The surgical system provides high resolution images of the surgical field during a wide variety of surgical procedures and incorporates optics, imaging and display technologies. Hirth Decl. at ¶¶ 31-32 and Exhibit N thereto; Response to Interrogatory Nos. 5 &

13 of Responses to Applicant's Interrogatories to Opposer. Opposer's goods are for use in the medical and health care field and are used primarily by surgeons and other physicians or health care providers. Hirth Decl. at ¶ 22; Response to Interrogatory Nos. 13 & 16 of Responses to Applicant's Interrogatories to Opposer. It also is undisputed that the services offered under Applicant's Mark are used in the medical and health care field and are used by surgeons, physicians and other health care workers. Hirth Decl. at ¶¶ 27-29 and Exhibits K, L & M thereto; Response to Interrogatory No. 16 of Applicant's Responses to Opposer's Interrogatories to Applicant. Further, the diagnostic imaging services offered under Applicant's Mark all produce images of portions of the human body and most, if not all, are computerized. Hirth Decl. at ¶¶ 28 & 29 and Exhibits L, M & P thereto. For example, a CT scan is a radiographic technique that uses a computer to assimilate multiple x-ray images into a two-dimensional crosssectional image. The data collected by the scan are relayed to a computer that turns the information into a picture on a screen. Id. A PET scan produces a medical image of the brain or other organs by using special computing imaging equipment, among other things, to record gamma radiation. Id.

As in *Eikonix Corp.*, the technology used in Opposer's goods and that is necessary to render Applicant's services are related. Both use computer, imaging and display technologies and both are used in the medical filed by surgeons and other physicians. *See* Section III.D.2. below. The parties' goods and services are sufficiently related that it is conceivable that Opposer could seek to develop and manufacture devices that would be used to render medical diagnostic imaging services. The overlap in the consumers of the parties' goods and services make confusion as to source even more likely should Opposer expand into the field of diagnostic imaging devices. The parties' goods and services are related as a matter of law.

# D. The Marketing Channels and Consumers of the Goods and Services Offered Under the Parties' Respective Marks Overlap.

The marketing and promotion of goods or services under the parties' respective marks and the classes of consumers of such goods and services are factors in the likelihood of confusion analysis. *E.I. DuPont deNemours & Co.*, 476 F.2d at 1363. Absent restrictions in a party's application or registration, the party's goods or services are presumed to be marketed in all customary trade channels to all customary classes of consumers. *Hewlett Packard Co.*, 281 F.3d at 1268 (citing *CBS*, *Inc. v. Morrow*, 708 F.2d 1579, 1581 (Fed. Cir. 1983)); *Barbara's Bakery Inc.*, 82 U.S.P.Q.2d at 1287; *Eikonix Corp.*, 209 U.S.P.Q. at 613-14.

#### 1. <u>Marketing Channels for the Parties' Respective Goods and Services Overlap.</u>

The marketing channels used by the parties to promote goods and services under their respective marks overlap. It is undisputed that neither Opposer's registration nor Applicant's Application at issue here contain restrictions on the trade or marketing channels that the parties' may use. Exhibits A, H & I to Hirth Decl.

Surgical systems such as those offered under Opposer's Mark may be marketed in a variety of ways, including via trade shows, press releases, print advertisements in journals and publications that target physicians, surgeons, health care professionals and the administrators of hospitals and surgical centers, direct sales calls to physicians, surgeons and administrators of hospitals and surgical centers, workshops for and training or other education of surgeons and physicians, presentations and attendance at meetings of medical associations and societies, distribution of promotional materials such as brochures, videos and CDs, and the Internet. In fact, it is undisputed that Opposer markets its goods under Opposer's Mark in each of these ways. Hirth Decl. at ¶ 23; Responses to Interrogatory Nos. 5 & 13 of Responses to Applicant's First Set of Interrogatories to Opposer.

Medical diagnostic imaging services such as those offered under Applicant's Mark also may be marketed in a variety of ways, including by print advertising targeting physicians, surgeons, other health care professionals and patients, presentations to physicians' groups or associations, distribution of promotional materials such as brochures, business cards, videos and CDs, and the Internet. In this case, it is undisputed that Applicant licensee has marketed and continues to market its services via the distribution of brochures, the use of business cards bearing Applicant's mark and two Internet websites. Hirth Decl. at ¶¶ 27-29 and Exhibits K, L & M thereto; Supplemental Responses to Interrogatory Nos. 5 & 11 of Applicant's Supplemental Responses to Opposer's First Set of Interrogatories to Applicant.

The marketing channels commonly and customarily used for the parties' goods and services offered under their respective marks overlap. Moreover, both Opposer's and Applicant's licensee market the goods and services under the parties' respective marks via brochures and Internet websites. The Internet has been recognized as particularly susceptible to a likelihood of confusion because it allows marks to be encountered simultaneously on the same screen.

GoTo.com, Inc., 202 F.3d at 1207. See also Brookfield Communication, Inc. v. West Coast Entertainment Corp., 174 F.3d 1036, 1057 (9th Cir. 1999). Both the Internet websites of Opposer and Applicant's licensee prominently display the parties' respective marks and both describe and illustrate the parties' respective goods and services. Exhibits K, L, M & N to the Hirth Decl. Accordingly, the marketing channels through which the parties' goods and services under their respective marks are promoted overlap.

#### 2. The Consumers of the Parties' Goods and Services Overlap.

The consumers of Opposer's goods and the services of Applicant's licensee offered under the parties' respective marks also overlap. It is undisputed that neither Opposer's registration nor Applicant's application contains a restriction pertaining to the consumers of the

parties' respective goods and services. Exhibits A, H & I to the Hirth Decl. It also is undisputed that consumers of Opposer's surgical systems are medical and health care professionals, including surgeons, physicians, hospital administrators and the administrators of outpatient surgical centers. Hirth Decl. at ¶ 23; Response to Interrogatory Nos. 13 & 16 of Responses to Applicant's First Set of Interrogatories to Opposer. It further is undisputed that the consumers of medical diagnostic imaging services offered under Applicant's Mark are medical patients and, as indicated in the brochures and on the Internet websites of Applicant's licensee, physicians, surgeons and health care professionals. Exhibits K & L to the Hirth Decl.; Response to Interrogatory No. 16 of Applicant's Responses to Opposer's First Set of Interrogatories to Applicant. The consumers of the goods and services offered under both parties' marks include surgeons and other physicians. The parties' consumers therefore overlap, exacerbating a likelihood of confusion.

#### E. Applicant Adopted its Mark Despite Knowledge of Opposer's Prior Registration.

A junior user need not intend to confuse consumers for a likelihood of confusion to exist. GoTo.com, Inc., 202 F.3d at 1207. However, intent to deceive the public is presumed when a junior user knowingly adopts a mark similar to that of another. Electropix, 178 F. Supp.2d at 1134.

Here, a member of Applicant sought a trade name for a "medical imaging center" and, in late 2002, chose the term "DaVinci". Hirth Decl. at ¶ 24; Response to Interrogatory No. 2 of Applicant's Responses to Opposer's First Set of Interrogatories to Applicant. In November 2003, Applicant learned of Opposer's registration of DA VINCI through a search of the records of the U.S. Patent & Trademark Office. Nonetheless, on August 1, 2005, Applicant exclusively licensed its Mark to MSPB, which immediately began using the Mark. On October 7, 2005, Applicant filed its application. *Id.*; Hirth Decl. at ¶ 25; Supplemental Response to Interrogatory

No. 4 of Applicant's Supplemental Responses to Opposer's First Set of Interrogatories to

Applicant; Exhibit J to Hirth Decl. Applicant undertook these actions with full knowledge of

Opposer's Mark and registration. "A party that knowingly adopts a mark similar to one used by

another for the same or closely related goods or services does so at its peril and any doubt on the

question of likelihood of confusion must be resolved against the junior user." Gillette Canada

Inc. v. Ranir Corp., 23 U.S.P.Q.2d 1768, 1774 (TTAB 1992).

IV. **CONCLUSION** 

For the foregoing reasons, Opposer Intuitive Surgical, Inc. respectfully requests that this

Board grant its motion for summary judgment and preclude registration on the Principal Register

of Applicant DaVinci Radiology Associates, P.L.'s mark DAVINCI DIAGNOSTIC IMAGING

& Design.

Dated: March \ . 2008

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

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### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| INTUITIVE SURGICAL, INC.,              | _<br>)<br>)                    |
|--|--------------------------------|
| _                                      | ) Opposition No. 91175319      |
| Opposer,                               | ) Serial No. 78/728,,786       |
| v. DAVINCI RADIOLOGY ASSOCIATES, P.L., | Published: December 19, 2006 ) |
| Applicant.                             | )<br>)                         |

## <u>DECLARATION OF MICHELLE J. HIRTH IN SUPPORT OF OPPOSER INTUITIVE</u> <u>SURGICAL, INC.'S MOTION FOR SUMMARY JUDGMENT</u>

#### I, Michelle J. Hirth, declare:

- 1. I am an attorney with the law firm of Sheppard, Mullin, Richter & Hampton, LLP, counsel for Opposer Intuitive Surgical, Inc. ("Opposer") and am one of the attorneys responsible for representing Opposer in this Opposition Proceeding.
- 2. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of her own knowledge are true and all statements on information and belief are believed to be true.
- 3. If called as a witness, I could and would competently testify to the following:

- 4. True and correct copies of Applicant's application for registration of DAVINCI DIAGNOSTIC IMAGING & Design, U.S. Trademark Application Serial No. 78/738,786, the Office Action issued on April 12, 2006 and response thereto filed on October 11, 2006, and the Notice of Publication of the mark DAVINCI DIAGNOSTIC IMAGING & Design ("Applicant's Mark"), all obtained from the U.S. Patent & Trademark Office's Trademark Document Retrieval ("TDR") system, are collectively attached hereto as Composite Exhibit A.
- 5. On behalf of Opposer, Sheppard, Mullin, Richter & Hampton, LLP filed a Notice of Opposition on January 18, 2007 against Application Serial No. 78/738,786, initiating this Opposition Proceeding.
- 6. Applicant DaVinci Radiology Associates, P.L. ("Applicant") did not file an answer to the Notice of Opposition and, on April 9, 2007, the Trademark Trial and Appeal Board (the "Board") issued a notice of default in this Proceeding.
- 7. Applicant filed a motion to set aside the notice of default. Applicant and Opposer stipulated to an extension of time for Applicant to file its answer in this Proceeding. Applicant filed its answer to the Notice of Opposition on or about April 30, 2007.
- 8. On July 12, 2007, the Board issued an order resetting the Discovery Period in this Proceeding to close on November 13, 2007 and resetting the Testimony Periods in this Proceeding such that Plaintiff's/Opposer's Testimony Period was reset to close on February 11, 2008.
- 9. The parties began serving discovery in this matter and, on October 17, 2007, the parties agreed to extend the Discovery and Testimony Periods to allow them to complete additional discovery. Opposer filed a consented motion to extend these deadlines on October 17, 2007. That same day, the Board granted the consented motion and reset the close of

the Discovery Period to December 13, 2007 and the close of Plaintiff's/Opposer's Testimony Period to March 12, 2008.

- engaged in discussions regarding the sufficiency of Applicant's responses to written discovery and negotiations for further responses from Applicant. On or about February 8, 2008, the parties again agreed to extend the Testimony Periods in this Proceeding to allow Applicant additional time to provide supplemental discovery responses to Opposer before the opening of Opposer's Testimony Period. Opposer filed a consented motion seeking to extend the Testimony Periods and the Board reset the Testimony Periods, including resetting the close of Plaintiff's/Opposer's Testimony Period to April 11, 2008.
- 11. On July 17, 2007, Opposer served on Applicant its first set of interrogatories and first set of requests for production of documents and things. On November 26, 2007, Opposer served its first set of requests for admission and second set of interrogatories on Applicant. True and correct copies of Opposer's First Set of Interrogatories to Applicant, Opposer's First Set of Requests for Production of Documents and Things to Applicant, Opposer's First Set of Requests for Admission to Applicant and Opposer's Second Set of Interrogatories to Applicant are collectively attached hereto as Composite Exhibit B.
- 12. On July 20, 2007, Applicant served on Opposer its first set of interrogatories and first set of requests for production of documents and things. True and correct copies of Applicant's First Set of Interrogatories to Opposer and Applicant's First Set of Requests for Production of Documents and Things to Opposer are collectively attached hereto as Composite Exhibit C.
- 13. Pursuant to an extension of time to respond to discovery agreed to by the parties, on September 20, 2007, Applicant served responses to Opposer's first set of

interrogatories and first set of requests for production of documents and things, and served responsive documents. True and correct copies of Applicant's Response to Opposer's First Set of Interrogatories to Applicant and Applicant's Response to Opposer's First Set of Requests for Production of Documents and Things to Opposer are collectively attached hereto as Composite Exhibit D.

- 14. Also pursuant to an agreement between the parties, Opposer served its responses to Applicant's first set of interrogatories and first set of requests for production of documents and things on November 26, 2007. True and correct copies of Responses to Applicant's First Set of Interrogatories to Opposer and Responses to Applicant's First Set of Requests for Production of Documents and Things are collectively attached hereto as Composite Exhibit E. Opposer produced documents responsive to Applicant's First Set of Requests for Production of Documents and Things to Opposer on December 11, 2007.
- Opposer's first set of requests for admission and second set of interrogatories. True and correct copies of Applicant's Response to Opposer's First Request for Admissions to Applicant and Applicant's Response to Opposer's Second Set of Interrogatories are collectively attached hereto as Composite Exhibit F.
- 16. On March 5, 2008, Applicant served on Opposer Applicant's

  Supplemental Response to Opposer's First Set of interrogatories to Applicant and served

  additional documents responsive to Opposer's First Set of Requests for Production of Documents

  and Things. True and correct copies of Applicant's Supplemental Response to Opposer's First

  Set of Interrogatories to Applicant are attached hereto as Exhibit G.
- 17. Opposer filed an application for registration of DA VINCI, U.S.

  Trademark Application Serial No. 75/982,190 on March 19, 1999. The mark DA VINCI was

registered in Opposer's name on October 1, 2002 for "computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers; a full line of FDA Classes I and II exempt surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners." Two true and correct copies of a certified copy, showing the current status and current title of U.S. Trademark Registration No. 2,628,871 prepared on March 5, 2008 by the U.S. Patent & Trademark Office are attached hereto as Exhibit H.

18. Opposer has continuously offered for sale and sold computerized surgical manipulation systems and parts and instruments associated with such systems under the trademark DA VINCI since at least July 7, 2000. *See* Response to Interrogatory No. 6 of Responses to Applicant's First Set of Interrogatories to Opposer, attached hereto as part of Composite Exhibit E.

- 19. Opposer filed U.S. Trademark Application Serial No. 76/665,748 in the name of Opposer on September 8, 2006 for use with "computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers, surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners." A true and correct copy of U.S. Trademark Application Serial No. 76/665,788 and the official filing receipt therefore are collectively attached hereto as Composite Exhibit I.
- 20. Opposer has continuously offered for sale and sol computerized surgical manipulation systems and parts and instruments for those systems under the DA VINCI S HD SURGICAL SYSTEM (Stylized) mark since at least January 2006. *See* Response to Interrogatory No. 6 of Responses to Applicant's First Set of Interrogatories to Opposer, attached hereto as part of Composite Exhibit E.

- 21. Opposer's goods offered under the DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) marks (collectively "Opposer's Marks") are computerized surgical systems used for minimally invasive, robotic-assisted surgery in a wide variety of surgical applications, including but not limited to cardiac, urology, general surgery, thoracic, gynecologic and pediatric surgical procedures. *See* Responses to Interrogatory Nos. 3 & 4 of Responses to Applicant's First Set of Interrogatories to Opposer, attached hereto as part of Composite Exhibit D.
- 22. Goods are offered under Opposer's Marks to hospitals, surgical centers, and physicians primarily through a direct sales force. Consumers of goods offered under Opposer's Marks are medical and health care professionals, including surgeons, doctors, hospital administrators and administrators of outpatient surgical centers. *See* Responses to Interrogatory Nos. 13 & 16 of Responses to Applicant's First Set of Interrogatories to Opposer, attached hereto as part of Composite Exhibit E.
- 23. Opposer's goods offered under Opposer's Marks are promoted via trade shows, press releases, workshops, training and other education of practitioners offered and provided by Opposer, attendance at and presentations by Opposer at meetings of medical associations and societies, and via Internet-based advertising including on Opposer's Internet websites www.intuitivesurgical.com, www.davincisurgery.com and www.davinciprostatectomy.com. *See* Responses to Interrogatory Nos. 5 & 13 of Responses to Applicant's First Set of Interrogatories to Opposer, attached hereto as part of Composite Exhibit E.
- 24. Applicant indicates in its responses to interrogatories that one of its members, Dr. Thomas Boyle, "developed the concept of a high-end imaging center that emphasized state-of-the-art imaging in an elegant setting" and sought a trade name that "had

public recognition, connoted a high level of sophistication and intelligence, and would be memorable for its dissonance in the context of a medical imaging center." Applicant further states that it chose the term "DaVinci" in late 2002. In November 2003, Applicant's counsel performed a search using the U.S. Patent & Trademark Office's Trademark Electronic Search System ("TESS") for the terms "DaVinci" and "Da Vinci[.]" As a result of that search, Applicant learned in November 2003 of Opposer's registration of DA VINCI. *See* Response to Interrogatory No. 2 of Applicant's Response to Opposer's First Set of Interrogatories to Applicant, attached hereto as part of Composite Exhibit D.

- 25. In response to discovery, Applicant has stated that, on August 1, 2005, it exclusively licensed the mark DAVINCI DIAGNOSTIC IMAGING & Design ("Applicant's Mark") to Medical Specialists of the Palm Beaches ("MSPB"), that Applicant's Mark was first used in commerce on August 1, 2005 and is used in association with medical diagnostic imaging services, specifically magnetic resonance imaging ("MRI"), computed tomography ("CT") scans, positron emission tomography {"PET") scans and digital mammography. *See* Supplemental Response to Interrogatory No. 4 of Applicant's Supplemental Response to Opposer's First Set of Interrogatories to Applicant, attached hereto as part of Composite Exhibit F. A true and correct copy of the License Agreement between Applicant and MSPB, produced by Applicant in response to Opposer's First Set of Requests for Production of Documents and Things, is attached hereto as Exhibit J.
- 26. On October 7, 2005, Applicant filed with the U.S. Patent & Trademark Office an application for registration of Applicant's Mark based upon use of the mark in interstate commerce at least as early as August 1, 2005 with "medical diagnostic imaging services."

- 27. Among other things, MSPB promotes services under Applicant's Mark through brochures. True and correct copies of MSPB brochures produced by Applicant in response to Opposer's First Set of Requests for Production of Documents and Things are attached hereto as Exhibit K. In those brochures, MSPB refers to the facility as which services are offered under Applicant's Mark as the "DaVinci Diagnostic Imaging Center[,]" "DaVinci Imaging Center" and "DaVinci[.]"
- 28. MSPB also operates two Internet websites, www.mspb.md and www.davinci-imaging.com and markets its services under Applicant's mark via these two websites. See Supplemental Response to Interrogatory No. 11 of Applicant's Supplemental Responses to Opposer's First Set of Interrogatories to Applicant, attached hereto as Exhibit G. On November 5, 2007, I went to the mspb.md Internet website. By typing in the term www.mspb.md into the Google search engine, the home page of the www.mspb.md website opened and displayed the term "DIAGNOSTICS." I clicked on that term and a page with the URL www.mspb.md/diagnostics/index.html opened. At the top of that page appeared the statement "The Medical Specialists of the Palm Beaches operates two state-of-the-art Diagnostics centers that provide you and your physician with one comprehensive source for diagnostics, medical testing and laboratory procedures." Below this statement appeared the term "DaVinci Diagnostic Imaging Center" and a description of the services offered there. I printed out the webpage at that time. On March 10, 2008, I again accessed the www.mspb.md Internet website and again clicked on the icon "DIAGNOSTICS" that appeared on the www.mspb.md homepage. A webpage opened that listed at the top icons for "Digital Mammography[,]" "MRI[,]" "PET/CT Scan[.]" and "64 Slice CT Scan[.]" I clicked on each of these icon and, for each, a webpage opened that describes the respective imaging service. I printed each of these webpages at that time. True and correct copies of pertinent pages of the Internet website

www.mspb.md, dated November 5, 2007 and March 10, 2008, are collectively attached hereto as Composite Exhibit L.

- 29. On September 27, 2008, I accessed the www.davinci-imaging.com website and the home page of that website appeared. That Internet webpage displayed Applicant's Mark, refers to the "DaVinci Diagnostic Imaging Center[,]" "DaVinci Imaging Center" and "DaVinci Diagnostic Imaging" and states that "DaVinci Imaging Center offers a wide range of imaging services including Digital Mammography, MRI, PET/CT Scan and the revolutionary new 64 Slice CT Scan." I printed out this webpage at that time. I again went to that webpage on March 10, 2008 and it was unchanged from its appearance on September 27, 2007. I printed out this webpage at that time. Also on March 10, 2008, I clicked on the icon "Mission/Philosophy" that appears on this webpage. A webpage titled "Mission/Philosophy" and with the URL www.davinci-imaging.com/difference.html opened. On that webpage, Applicant's Mark appears and the MSPB facility where services under Applicant's Mark are offered is. referred to as "DaVinci[.]" At that time, I printed this webpage. Also at that time, I clicked on the icons titled "Imaging Services[,]" "High Field MRI[,]" "64-Slice CT Scan[,]" "Digital Mammography" and "PET CT Fusion[,]" and printed out the resultant webpages which opened. Each of these resultant webpages displayed Applicant's Mark and described the respective imaging services. True and correct copies of pertinent pages of the Internet website www.davinci-imaging.com, dated September 27, 2007 and March 10, 2008, are collectively attached hereto as Composite Exhibit M.
- 30. On its Internet website, www.mspb.com, Applicant's licensee, MSPB, states that digital mammography produces an image of the breast, that MRI produces "images" of both the human skeletal structure and soft tissue including muscles, the eye, mouth and throat, reproductive organs and brain, and that the 64-slice CT scan takes "rapid images" of the heart

and arteries. *See* Composite Exhibit L attached hereto. On its Internet website. <a href="www.davinci-imaging.com">www.davinci-imaging.com</a>, Applicant's licensee states: (a) "MRI produces intricate images of both the human skeletal structure and soft tissues. . . . MRI is extremely useful in accurately diagnosing medical conditions and disorders[;]" (b) the 64-Slice CT Scan "offers the ability to take unmistakably reflective 3D images of the heart and coronary arteries" and "takes rapid images of the heart and the coronary arteries at work[;]" and (c) "Similar to the processing capabilities of a digital camera, Digital Mammography provides cleaner and clearer images[.]" *See* Composite Exhibit M attached hereto.

- 31. I assisted in the preparation of Opposer's Responses to Applicant's Interrogatories to Opposer. In those Responses, Opposer stated that it promotes its goods under the DA VINCI and DA VINCI S HD SURGICAL SYSTEM marks, in part, via its Internet websites <a href="https://www.intuitivesurgical.com">www.intuitivesurgical.com</a>, <a href="https://www.davincisurgery.com">www.davincisurgery.com</a> and <a href="https://www.davinciprostatectomy.com">www.davinciprostatectomy.com</a>. See Responses to Interrogatory Nos. 5 & 11 of Responses to Applicant's Interrogatories to Opposer, attached hereto as part of Composite Exhibit E.
- Documents and Things to Opposer, Opposer produced a number of documents including brochures, fliers and articles promoting and pertaining to its goods offered under the DA VINCI and DA VINCI S HD SURGICAL SYSTEM marks. I personally reviewed every document produced by Opposer in this Proceeding and was personally involved in the production of documents by Opposer. The brochures, fliers and articles produced included documents Bates labeled ISI000039-45, ISI000070-75, ISI000696-703 and ISI000813-835. These documents include descriptions of the goods offered under Opposer's Marks and the technologies used in those goods, including computer hardware and software, optics, imaging an display technologies. On March 3, 2008, I accessed Opposer's Internet websites <a href="https://www.intuitivesurgical.com">www.intuitivesurgical.com</a> and

www.davincisurgery.com. At the home page of the www.davincisurgery.com website, I clicked on the "daVinci" icon and a page opened titled "The Enabling Technology: The daVinci® Surgical System[.]" I printed out this webpage. I then clicked on the "Features" icon on that page and a page titled "Features" opened. I printed out this webpage. At the home page of www.intuitivesurgical.com, I clicked on the "Products" icon and a page opened titled "Products[.]" I then clicked on the "da Vinci Surgical System" icon on that page and a webpage titled "daVinci® Surgical System" opened. I printed that page at that time. I then clicked on the icon "Features and Benefits" and a page opened titled "Features and Benefits of the daVinci® Surgical System" and I printed that page. I then clicked on the icon "3D Vision System" and a page with that title opened. I printed that page at that time. I then clicked on the icon "4th Arm" and a page with that title opened. I printed that page at that time. Each of these webpages describes goods offered under Opposer's Marks and the technologies used in those goods. True and correct copies of documents produced by Opposer in this Proceeding and Bates labeled ISI000039-45, ISI000070-75, ISI000696-703 and ISI000813-835, the Internet webpages titled "The Enabling Technology: The daVinci® Surgical System" and "Features" from the www.davincisurgery.com Internet website, and the Internet webpages titled "daVinci® Surgical System[,]" "Features and Benefits of the daVinci® Surgical System[,]" "3D Vision System" and "4th Arm" are collectively attached hereto as Composite Exhibit N.

33. On March 10, 2008, I accessed the Internet website <a href="www.bartleby.com">www.bartleby.com</a>.

This Internet website provides an on-line copy of the Sixth Edition of the Columbia

Encyclopedia published by Columbia University Press. I entered into the search bar on the website "Leonardo Da Vinci" and obtained a copy of the encyclopedia entry for "Leonardo Da Vinci" that is contained in the Columbia Encyclopedia. I printed out this entry at that time. A

true and correct copy of the entry for Leonardo Da Vinci from the on-line version of the Columbia Encyclopedia at <a href="https://www.bartley.com">www.bartley.com</a> is attached hereto as Exhibit O.

34. On March 10, 2008, I again accessed the Internet website www.bartleby.com and the on-line copy of the Sixth Edition of the Columbia Encyclopedia published by Columbia University Press. I entered into the search bar on that website the terms "magnetic resonance imaging[,]" "CAT scan" and "PET scan" and obtained copies of the encyclopedia entries for those three terms. I printout out these entries at that time. True and correct copies of the entries for "magnetic resonance imaging[,]" "CAT scan" and "PET scan" from the on-line version of the Columbia Encyclopedia at www.bartlesby.com are collectively attached hereto as Exhibit P. The entry for "magnetic resonance imaging" states that an MRI is a diagnostic technique that produces images of organs and other internal body structures and involves the emission of radio waves that are translated into a two-dimensional picture by a computer. The entry for "CAT scan" indicates that "CAT" is an abbreviation for computerized axial tomography, also called a CT scan, and involves the use of x-rays that are used to form a composite, readable image by a computer. The entry for "PET scan" states that it is a medical imaging technique that uses special computerized imaging equipment to record gamma radiation an form an image.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed this <u>f</u> day of March 2008, at San Francisco, California.

Michelle J. Hirth



| 4 |   |
|---|---|
| 1 | , |

| Document Description:  | Application | Mail / Create Date: 07-Oct-2005  |  |
|------------------------|-------------|----------------------------------|--|
| Pr <b>evious P</b> age | Next Page   | You are currently on page 1 of 3 |  |

PTO Form 1478 (Rev 6/2005)
OMB No. 0651-0009 (Exp xx/xx/xxxx)

# Trademark/Service Mark Application, Principal Register

**Serial Number: 78728786 Filing Date: 10/07/2005** 

# The table below presents the data as entered.

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| MARK SECTION  |  |  |
| MARK FILE NAME  | \\TICRS\EXPORT8\IMAGEOUT8 \787<br>\\287\\78728786\\xml1\\AP P0002.JPG              |  |
| STANDARD CHARACTERS   | NO   |  |
| USPTO-GENERATED IMAGE                                       | NO   |  |
| LITERAL ELEMENT   | DaVinci Diagnostic Imaging   |  |
| COLOR MARK  | NO   |  |
| DESCRIPTION OF THE MARK (and Color Location, if applicable) | The mark consists of A stylized letter "i" with a silhouette of the Vitruvian man. |  |
| PIXEL COUNT ACCEPTABLE                                      | NO   |  |
| PIXEL COUNT   | 1108 x 654   |  |
| OWNER SECTION   |  |  |
| NAME  | DaVinci Radiology Associates, P.L.   |  |
| INTERNAL ADDRESS  | Suite 1330   |  |
| STREET  | 505 South Flagler Drive  |  |
| CITY  | West Palm Beach  |  |
| STATE   | Florida  |  |
| ZIP/POSTAL CODE   | 33401  |  |
| COUNTRY   | United States  |  |
| PHONE   | 561 655-8200   |  |

| FAX                                 | 561 655-1389  |  |
|-------------------------------------|---|--|
| EMAIL                               | kirklaw@gate.net  |  |
| AUTHORIZED EMAIL COMMUNICATION      | Yes   |  |
| LEGAL ENTITY SECTION                |   |  |
| ТҮРЕ                                | LIMITED LIABILITY COMPANY   |  |
| STATE/COUNTRY UNDER WHICH ORGANIZED | Florida   |  |
| GOODS AND/OR SERVICES SECTION       |   |  |
| INTERNATIONAL CLASS                 | 044   |  |
| DESCRIPTION                         | medical diagnostic imaging services                               |  |
| FILING BASIS                        | Section 1(a)  |  |
| FIRST USE ANYWHERE DATE             | At least as early as 08/01/2005                                   |  |
| FIRST USE IN COMMERCE DATE          | At least as early as 08/01/2005                                   |  |
| SPECIMEN FILE NAME(S)               | \\TICRS\EXPORT8\IMAGEOUT8 \787<br>\287\78728786\xml1\AP P0003.JPG |  |
| SPECIMEN DESCRIPTION                | identification sign   |  |
| SIGNATURE SECTION                   |   |  |
| SIGNATURE                           | /kirk friedland/  |  |
| SIGNATORY NAME                      | Kirk Friedland  |  |
| SIGNATORY DATE                      | 10/07/2005  |  |
| SIGNATORY POSITION                  | Attorney  |  |
| PAYMENT SECTION                     |   |  |
| NUMBER OF CLASSES                   | 1   |  |
| NUMBER OF CLASSES PAID              | 1   |  |
| SUBTOTAL AMOUNT                     | 325   |  |
| TOTAL AMOUNT                        | 325   |  |
| ATTORNEY                            |   |  |
| NAME                                | Kirk Friedland  |  |
| FIRM NAME                           | Kirk Friedland Law Office   |  |
| INTERNAL ADDRESS                    | Suite 1330  |  |
| STREET                              | 505 South Flagler Drive   |  |

| CITY                           | West Palm Beach  |  |
|--------------------------------|--|--|
| STATE                          | Florida  |  |
| ZIP/POSTAL CODE                | 33401  |  |
| COUNTRY                        | United States  |  |
| PHONE                          | 561 655-8200   |  |
| FAX                            | 561 655-1389   |  |
| EMAIL                          | kirklaw@gate.net   |  |
| AUTHORIZED EMAIL COMMUNICATION | Yes  |  |
| CORRESPONDENCE SECTION         |  |  |
| NAME                           | Kirk Friedland   |  |
| FIRM NAME                      | Kirk Friedland Law Office  |  |
| INTERNAL ADDRESS               | Suite 1330   |  |
| STREET                         | 505 South Flagler Drive  |  |
| CITY                           | West Palm Beach  |  |
| STATE                          | Florida  |  |
| ZIP/POSTAL CODE                | 33401  |  |
| COUNTRY                        | United States  |  |
| PHONE                          | 561 655-8200   |  |
| FAX                            | 561 655-1389   |  |
| EMAIL                          | kirklaw@gate.net   |  |
| AUTHORIZED EMAIL COMMUNICATION | Yes  |  |
| FILING INFORMATION             |  |  |
| SUBMIT DATE                    | Fri Oct 07 12:55:20 EDT 2005   |  |
| TEAS STAMP                     | USPTO/BAS-661496051-20051<br>007125520019186-78728786-<br>200747e64ccdf9b4f2be68291<br>66776eabe4-CC-1332-200510<br>07125021267926 |  |

# Trademark/Service Mark Application, Principal Register

Serial Number: 78728786 Filing Date: 10/07/2005

### To the Commissioner for Trademarks:

MARK: DaVinci Diagnostic Imaging (stylized and/or with design, see mark)

The literal element of the mark consists of DaVinci Diagnostic Imaging.

The mark consists of A stylized letter "i" with a silhouette of the Vitruvian man.

The applicant, DaVinci Radiology Associates, P.L., a LIMITED LIABILITY COMPANY organized under the laws of Florida, residing at Suite 1330, 505 South Flagler Drive, West Palm Beach, Florida, United States, 33401, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 044: medical diagnostic imaging services

In International Class 044, the mark was first used at least as early as 08/01/2005, and first used in commerce at least as early as 08/01/2005, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) identification sign.

# Specimen - 1

The applicant hereby appoints Kirk Friedland of Kirk Friedland Law Office, Suite 1330, 505 South Flagler Drive, West Palm Beach, Florida, United States, 33401 to submit this application on behalf of the applicant.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: kirklaw@gate.net.

A fee payment in the amount of \$325 will be submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /kirk friedland/ Date: 10/07/2005

Signatory's Name: Kirk Friedland Signatory's Position: Attorney

Mailing Address:

Kirk Friedland

Suite 1330

505 South Flagler Drive

West Palm Beach, Florida 33401

RAM Sale Number: 1332

RAM Accounting Date: 10/07/2005

Serial Number: 78728786

Internet Transmission Date: Fri Oct 07 12:55:20 EDT 2005

TEAS Stamp: USPTO/BAS-661496051-20051007125520019186

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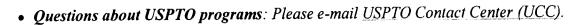
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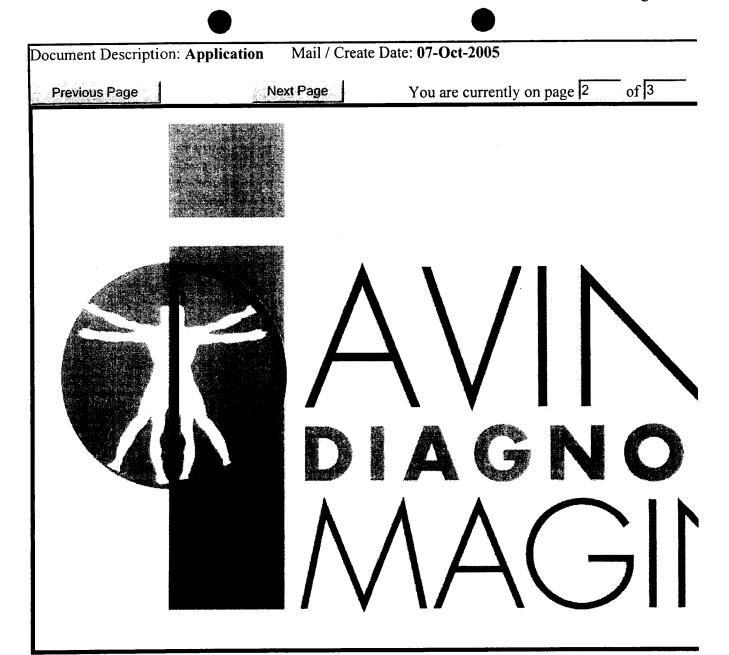
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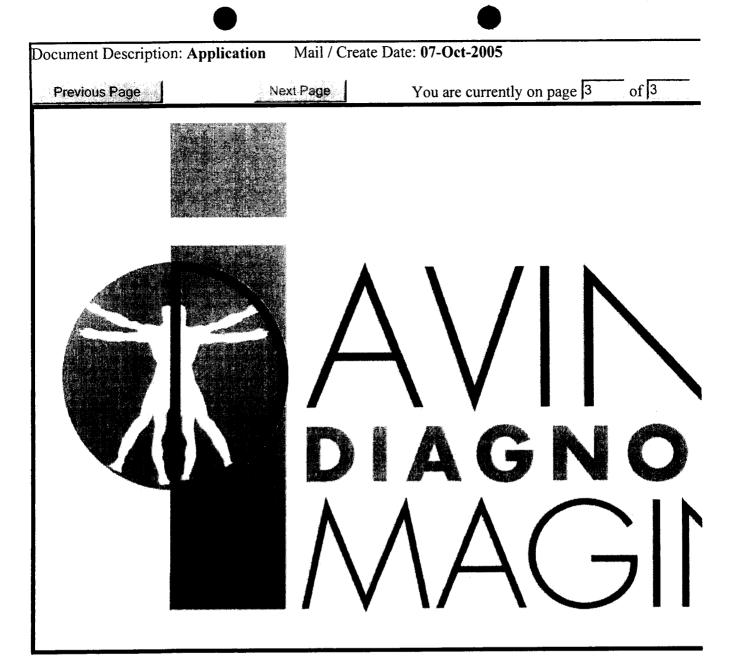
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Document Description: Offc Action Outgoing

Mail / Create Date: 12-Apr-2006



To:

DaVinci Radiology Associates, P.L. (kirklaw@gate.net)

Subject:

TRADEMARK APPLICATION NO. 78728786 - DAVINCI

DIAGNOSTIC IMAGING - N/A

Sent:

4/12/2006 12:55:01 PM

Sent As:

ECOM102@USPTO.GOV

Attachments:

### **UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 

78/728786

APPLICANT:

DaVinci Radiology Associates, P.L.

\*78728786\*

**CORRESPONDENT ADDRESS:** 

KIRK FRIEDLAND

KIRK FRIEDLAND LAW OFFICE 505 S FLAGLER DR STE 1330

WEST PALM BEACH, FL 33401-5951

**RETURN ADDRESS:** 

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

MARK:

DAVINCI DIAGNOSTIC IMAGING

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

**CORRESPONDENT EMAIL ADDRESS:** 

kirklaw@gate.net

Please provide in all correspondence:

- 1. Filing date, serial number, mark and applicant's name.
- 2. Date of this Office Action.
- 3. Examining Attorney's name and Law Office number.
- 4. Your telephone number and e-mail address

### **OFFICE ACTION**

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at http://tarr.uspto.gov/, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/728786

The assigned examining attorney has reviewed the referenced application and determined the following.

### SEARCH OF OFFICE RECORDS

The examining attorney has searched the Office records and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

### **DISCLAIMER**

The Office can require an applicant to disclaim exclusive rights to an unregistrable part of a mark, rather than refuse registration of the entire mark. Trademark Act Section 6(a), 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), 15 U.S.C. §1052(e), the Office can refuse registration of the entire mark where it is determined that the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. Thus, the Office may require the disclaimer of a portion of a mark which, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). TMEP §1213.03(a). If an applicant does not comply with a disclaimer requirement, the Office may refuse registration of the entire mark. TMEP §1213.01(b).

A "disclaimer" is thus a written statement that an applicant adds to the application record that states that applicant does not have exclusive rights, separate and apart from the entire mark, to particular wording and/or to a design aspect. The appearance of the applied-for mark does not change.

The following cases explain the disclaimer requirement more fully: Dena Corp. v. Belvedere Int'l Inc., 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991); In re Kraft, Inc., 218 USPQ 571 (TTAB 1983); In re EBS Data Processing, Inc., 212 USPQ 964 (TTAB 1981); In re National Presto Industries, Inc., 197 USPQ 188 (TTAB 1977).

Applicant must insert a disclaimer of DIAGNOSTIC in the application because it merely identifies a characteristic of the services. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §1213.

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use "DIAGNOSTIC" apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

### **COLOR DRAWING**

The drawing of the mark contains color. Color drawings must be accompanied by the following: (1) a color claim naming the colors that are a feature of the mark; and (2) a separate statement describing where the color(s) appear on the mark. A color drawing will not publish without both of these statements.

A properly worded color claim would read as follows:

The color(s) < name the <math>color(s) > are claimed as a distinctive feature of the mark.

A properly worded description would read as follows:

The color(s) < name the color(s)> appear in < specify portion of mark on which color(s) appear>.

### SPECIMEN OF USE

The applicant has submitted a specimen that appears to be temporary in nature, e.g. a temporary reproduction of the mark, rather than showing the mark identifying the services in the sale or advertising of such services. The applicant must submit a specimen of a more permanent nature. 37 C.F.R. §2.61(b); TMEP §904.04(a).

# The applicant must submit a specimen, and must submit the following statement:

The specimen was in use in commerce at least as early as the filing date of the application.

This statement must be verified with an affidavit or a declaration under 37 C.F.R. Section 2.20. 37 C.F.R. Section 2.71(d)(1).

The following is a properly worded declaration under 37 C.F.R. Section 2.20. At the end of the response, the applicant should insert the declaration signed by someone authorized to sign under 37 C.F.R. Section 2.33(a).

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

| (Signature)                       |  |
|-----------------------------------|--|
| (Print or Type Name and Position) |  |
| (Date)                            |  |

/Cheryl Clayton/ Attorney Law Office 102 571-272-9102

# HOW TO RESPOND TO THIS OFFICE ACTION:

- ONLINE RESPONSE: You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at http://www.uspto.gov/teas/index.html. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.
- REGULAR MAIL RESPONSE: To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the** *date of receipt in the Office*, not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

**STATUS OF APPLICATION:** To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <a href="http://tarr.uspto.gov">http://tarr.uspto.gov</a>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <a href="http://portal.uspto.gov/external/portal/tow">http://portal.uspto.gov/external/portal/tow</a>.

**GENERAL TRADEMARK INFORMATION:** For general information about trademarks, please visit the Office's website at <a href="http://www.uspto.gov/main/trademarks.htm">http://www.uspto.gov/main/trademarks.htm</a>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

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- Questions about USPTO programs: Please e-mail <u>USPTO Contact Center (UCC)</u>.

  NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

| Occument Description: Response to Office Action Mail / Create Date: 11-Oct-2006 |              |   |
|---|--------------|---|
| Previous Page   | Next Page    | You are currently on page 1 of 2  |
| PTO Form 1957 (Rev 9/2005)<br>OMB No. 0651-0050 (Exp. 04/20                     | 009)         |   |
| Response to Office Action   |              |   |
| The table below presents the data as entered.                                   |              |   |
| Input F   | ield         | Entered .   |
| SERIAL NUMBER   |              | 78728786  |
| LAW OFFICE ASS  | IGNED        | LAW OFFICE 102  |
| MARK SECTION (no change)  |              |   |
| GOODS AND/OR S  | ERVICES SECT | ION (current)   |
| INTERNATIONAL CLA   | SS           | 044   |
| DESCRIPTION   |              | medical diagnostic imaging services   |
| FILING BASIS  |              | Section 1(a)  |
| FIRST USE ANYW  | HERE DATE    | At least as early as 08/01/2005   |
| FIRST USE IN COM  | MERCE DATE   | At least as early as 08/01/2005   |
| GOODS AND/OR SERVICES SECTION (proposed)  |              |   |
| INTERNATIONAL CLA   | SS           | 044   |
| DESCRIPTION   |              | medical diagnostic imaging services   |
| FILING BASIS  |              | Section 1(a)  |
| FIRST USE ANYW  | HERE DATE    | At least as early as 08/01/2005   |
| FIRST USE IN COM  | MERCE DATE   | At least as early as 08/01/2005   |
| STATEMENT TYP   | E            | "The substitute specimen(s) was in use in commerce as of the filing date of the application." |
| SPECIMEN<br>FILE NAME(S)  |              | \\TICRS\EXPORT2\IMAGEOUT2 \787\287\78728786<br>\\xml1\RO A0002.JPG                            |
| SPECIMEN DESCR  | LIPTION      | Business card   |
| ADDITIONAL STATEMENTS SECTION   |              |   |
|   |              | "No claim is made to the exclusive right to use   |

| DISCLAIMER  | "DIAGNOSTIC" apart from the mark as shown."  |  |
|---|--|--|
| DESCRIPTION OF THE MARK (and Color Location, if applicable) | "The mark consists of a white Vatruvian man silhouette image inside of a circle shaded brown in the lower portion blending to yellow in the upper portion, the right half of the circle is superimosed within the brown letter "D" in the brown text "DAVINCI", the text DIAGNOSTIC is yellow and the text "iMAGING" is brown, the dot over the letter "i" is yellow." |  |
| COLOR(S) CLAIMED (If applicable)                            | "The color(s) white, brown and yellow is/are claimed as a feature of the mark."  |  |
| SIGNATURE SECTION   |  |  |
| DECLARATION SIGNATURE                                       | /kirk friedland/   |  |
| SIGNATORY'S NAME  | Kirk Friedland   |  |
| SIGNATORY'S POSITION  | Attorney   |  |
| DATE SIGNED   | 10/11/2006   |  |
| RESPONSE SIGNATURE  | /kirk friedland/   |  |
| SIGNATORY'S NAME  | Kirk Friedland   |  |
| SIGNATORY'S POSITION  | Attorney   |  |
| DATE SIGNED   | 10/11/2006   |  |
| AUTHORIZED SIGNATORY  | YES  |  |
| FILING INFORMATION SECTION                                  |  |  |
| SUBMIT DATE   | Wed Oct 11 17:43:58 EDT 2006   |  |
| TEAS STAMP  | USPTO/ROA-72.144.209.207-<br>20061011174358071693-7872<br>8786-34063d19e4298f8a091a<br>371b62e0d19023-N/A-N/A-20<br>061011171619414844   |  |

PTO Form 1957 (Rev 9/2005) OMB No. 0651-0050 (Exp. 04/2009)

# Response to Office Action

# To the Commissioner for Trademarks:

Application serial no. 78728786 has been amended as follows:

Classification and Listing of Goods/Services

## Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 044 for medical diagnostic imaging services

Original Filing Basis: 1(a).

Proposed: Class 044 for medical diagnostic imaging services

Filing Basis: 1(a).

Section 1(a), Use in Commerce: The mark was first used at least as early as 08/01/2005 and first used in commerce at least as early as 08/01/2005, and is now in use in such commerce.

Applicant hereby submits a new specimen for Class 044.

The specimen(s) submitted consists of Business card.

For an application based on 1(a), Use in Commerce, "The substitute specimen(s) was in use in commerce as of the filing date of the application."

Specimen File1

### **Additional Statements**

"No claim is made to the exclusive right to use "DIAGNOSTIC" apart from the mark as shown."

"The mark consists of a white Vatruvian man silhouette image inside of a circle shaded brown in the lower portion blending to yellow in the upper portion, the right half of the circle is superimosed within the brown letter "D" in the brown text "DAVINCI", the text DIAGNOSTIC is yellow and the text "iMAGING" is brown, the dot over the letter "i" is yellow."

"The color(s) white, brown and yellow is/are claimed as a feature of the mark."

### **Declaration Signature**

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /kirk friedland/ Date: 10/11/2006

Signatory's Name: Kirk Friedland

Signatory's Position: Attorney

Response Signature

Signature: /kirk friedland/ Date: 10/11/2006

Signatory's Name: Kirk Friedland Signatory's Position: Attorney

Serial Number: 78728786

Internet Transmission Date: Wed Oct 11 17:43:58 EDT 2006 TEAS Stamp: USPTO/ROA-72.144.209.207-200610111743580

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101 JFK Drive Atlantis, FL 33462 Adjacent to JFK Medical Ctr (561) 968-3310 www.davinci-imaging.com

# Thomas P. Boyle M.D.

American Board of Radiology Certfied Body MRI and CT Imaging, Breast Imaging

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### Side - 1



**NOTICE OF PUBLICATION UNDER §12(a)** 

MAILING DATE: Nov 29, 2006

**PUBLICATION DATE: Dec 19, 2006** 

The mark identified below will be published in the Official Gazette on Dec 19, 2006. Any party who believes they will be damaged by registration of the mark may oppose its registration by filing an opposition to registration or a request to extend the time to oppose within thirty (30) days from the publication date on this notice. If no opposition is filed within the time specified by law, the USPTO may issue a Certificate of Registration.

To view the Official Gazette online or to order a paper copy, visit the USPTO website at http://www.uspto.gov/web/trademarks/tmog/ any time within the five-week period after the date of publication. You may also order a printed version from the U.S. Government Printing Office (GPO) at http://bookstore.gpo.gov or 202-512-1800. To check the status of your application, go to http://tarr.uspto.gov/.

SERIAL NUMBER: 78728786

MARK:

DAVINCI DIAGNOSTIC IMAGING

OWNER:

DaVinci Radiology Associates, P.L.

### Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE COMMISSIONER FOR TRADEMARKS P.O. BOX 1451 ALEXANDRIA, VA 22313-1451

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- Questions about USPTO programs: Please e-mail USPTO Contact Center (UCC).

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# ORIGINAL

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| INTUITIVE SURGICAL, INC.,  Opposer,  v.  DAVINCI RADIOLOGY ASSOCIATES | ) ) ) Opposition No. 91175319 ) Serial No. 78/728,,786 ) Published: December 19, 200 |
|---|--|
| DAVINCI RADIOLOGY ASSOCIATES, P.L., Applicant.                        | )<br>)<br>)<br>)   |

### OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rule of Practice 2.120, Opposer Intuitive Surgical, Inc. ("Opposer") hereby requests that Applicant DaVinci Radiology Associates, P.L. ("Applicant") serve upon Opposer its sworn answers to the interrogatories set forth below within thirty (30) days of service hereof. These interrogatories are intended to be continuing in nature and any information which may be discovered subsequent to the service and filing of the answers to the interrogatories should be brought to the attention of Opposer as may be required by the Federal Rules of Civil Procedure, through supplemental answers, within a reasonable time following such discovery.

### **DEFINITIONS**

The following definitions are to be used by Applicant in answering the interrogatories set forth below:

A. "Opposer" means Intuitive Surgical, Inc.

- B. "Opposer's Marks" mean the trademarks: (1) DA VINCI, covered by U.S. Trademark Registration No. 2,628,871; and (2) DA VINCI S HD SURGICAL SYSTEM (Stylized), covered by U.S. Trademark Application Serial No. 76/665,748.
- C. "You," your," "yourself" and "Applicant" mean Applicant DaVinci Radiology Associates, P.L., any parent company, predecessors, subsidiaries or divisions, its agents and all other persons acting or purporting to act on its behalf, including all past or present officers. attorneys, servants, representatives, employees or other persons or entities exercising their discretion, making policy or decisions or participating in any of the foregoing functions.
- D. "Applicant's Mark" means the trademark DAVINCI DIAGNOSTIC IMAGING & Design, covered by U.S. Trademark Application Serial No. 78/728,786, which is the subject of this Opposition Proceeding.
- E. "Person" or "persons" mean both natural persons and corporate or other business entities, whether or not in the employ of Applicant. The acts and knowledge of a person are defined to include the acts and knowledge of that person's employees, representatives, agents and attorneys.
- F. "Consumer," "consumers" and the "consuming public" mean: (i) end-user beneficiaries of the goods and/or services offered under Applicant's Mark, including but not limited to patients and those upon whom diagnostic tests are performed; and (ii) physicians and health care providers, including but not limited to treating physicians and health care providers, referring physicians and health care providers, physicians and health care providers who order diagnostic tests, and physicians and health care providers who receive the results of diagnostic tests.
- G. The "trade" and "members of the trade" mean: (i) members of the medical, diagnostic and/or surgical professions; and (ii) physicians and health care providers who -2-

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conduct, oversee and/or interpret diagnostic tests and test results.

- "Document" or "documents" mean every writing or record of any type or H. description or other tangible evidence that is or has been in your possession, custody or control, including without limitation: communications, correspondence, memoranda, electronic mail, telegrams, notes (whether handwritten, typed, stenographic, electronically recorded or otherwise), summaries, records of telephone conversations, tapes, files, publications, diaries, reports, minutes, customer lists, books, manuals, publications, notebooks, charts, plans, sketches, drawings, diagrams, pamphlets, brochures, manuals, blueprints, photographs, customer surveys, contracts, licenses, agreements, instruction manuals, user manuals, computer software, operation manuals, catalogs and catalog sheets, advertisements, including storyboards and scripts, circulars, trade letters, press releases, product releases, product descriptions, and shall include every copy where such copy is not identical to the original or where such copy contains any commentary or notation whatsoever that does not appear in the original. As used herein, "documents" also includes any document, whether or not in Applicant's possession, custody or control, and any document which may be considered privileged by Applicant, which document shall be identified to assist Opposer and the Trademark Trial and Appeal Board in determining whether a claim of privilege may properly be made as to such document.
  - I. "Identify" or "identity" when used in reference to:
    - An individual, means to state his/her full name, present or last known home address (designating which), and present or last known position or business affiliation (designating which);
    - ii. A firm, company, corporation, partnership or other corporate entity, means
       to state its full name, state of incorporation (if any), and present or last
       known address (designating which);

- iii. A document, means to state the date, author(s), sender, recipients of the original and all copies, the type of document (e.g., letter, memorandum, etc.), or some other means of identifying it and its present location or custodian, the title or subject mater of said document, and, in the case of a document in your possession, custody or control, whether you will make it available for inspection and/or copying; and
- iv. In the case of oral or other communications, the date, the communicator(s), the recipient(s) of the communication, and the nature of the communication.
- J. The terms "and" and "or" as used herein should be construed either conjunctively or disjunctively, whichever makes the request more inclusive.

### **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify the person or persons most familiar with the conception and adoption of Applicant's Mark.

### **INTERROGATORY NO. 2:**

Describe the circumstances underlying the conception and adoption of Applicant's Mark by identifying the timing of the conception and adoption, the persons involved in the conception and adoption, the alternatives considered, and the factors considered in conceiving and adopting Applicant's Mark.

### **INTERROGATORY NO. 3:**

Identify and describe all goods and services on which you use, have used or intend to use Applicant's Mark.

### **INTERROGATORY NO. 4:**

State the intended or potential uses for Applicant's goods and/or services offered under or in connection with Applicant's Mark.

### **INTERROGATORY NO. 5:**

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

### **INTERROGATORY NO. 6:**

State the date(s) upon which you began to use Applicant's Mark on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

### **INTERROGATORY NO. 7:**

Other than the instant proceeding, identify all administrative and judicial proceedings in which you are or have been involved concerning Applicant's Mark by setting forth the identity of the parties, the title, docket number, tribunal name, and current status of the proceeding.



Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the trademark availability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

### **INTERROGATORY NO. 9:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding consumer reaction to Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

### **INTERROGATORY NO. 10:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the protectability and/or enforceability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

### **INTERROGATORY NO. 11:**

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

### **INTERROGATORY NO. 12:**

Identify the person or persons most familiar with the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

### **INTERROGATORY NO. 13:**

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

### **INTERROGATORY NO. 14:**

Identify the person or persons most knowledgeable about the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

### **INTERROGATORY NO. 15:**

Describe the circumstances under which Applicant first became aware of Opposer's Marks, including but not limited to stating the date(s) upon which Applicant first became aware of Opposer's Marks, identifying the person or persons at Applicant who first became aware of Opposer's Marks, and stating the manner in which Applicant first became aware of Opposer's Marks.

### **INTERROGATORY NO. 16:**

Describe the consumers of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

### **INTERROGATORY NO. 17:**

If you have ever received any communication(s) that expressed confusion as to a possible relationship between you and Opposer, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

### **INTERROGATORY NO. 18:**

If you have ever received any communication(s) that expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

### **INTERROGATORY NO. 19:**

Describe the testimony that you expect to elicit from each expert witness that you intend to call to testify in this proceeding by identifying the expert witness, the subject matter on which he or she is expected to testify, the substance of the facts and opinions about which he or she is expected to testify and the grounds for each such opinion.

### **INTERROGATORY NO. 20:**

Describe the testimony that you expect to elicit from each lay witness that you intend to call to testify in this proceeding by setting forth the identity of the lay witness, the subject matter in which he or she is expected to testify, and a brief summary of the testimony expected.

### **INTERROGATORY NO. 21:**

Describe all exhibits that you intend to rely upon in this proceeding by setting forth a brief statement of the contents and significance of all such exhibits.

### **INTERROGATORY NO. 22:**

If you have sought or received opinions, legal or otherwise, regarding your right to use Applicant's Mark, describe each such opinion by setting forth the identity of the person(s) from whom you requested each such opinion, the identity of the person(s) who rendered each such opinion, a brief summary of each such opinion rendered, and a description of each document relied upon in the course of rendering each such opinion.

### **INTERROGATORY NO. 23:**

Identify those person(s) who had more than a clerical role in answering the foregoing interrogatories.

### **INTERROGATORY NO. 24:**

Identify those person(s) who had more than a clerical role in searching for documents

responsive to Opposer's First Set of Requests for Production of Documents and Things to Applicant.

Dated: July 16, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Ву

Michelle J. Hirth Attorneys for Opposer INTUITIVE SURGICAL, INC.

Four Embarcadero Center 17th Floor San Francisco, CA 94111

TEL: (415) 434-9100 FAX: (415) 434-3947

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OPPOSER'S FIRST SET OF

## INTERROGATORIES TO APPLICANT was served on Applicant DaVinci Radiology

Associates, P.L., by First Class U.S. Mail, postage prepaid, to:

Kirk Friedland, Esq. 505 S. Flagler Drive, Suite 1330 West Palm Beach, Florida 33401

Attorneys for Applicant

This 11 day of July, 2007.

-11-

ORIGINAL

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| INTUITIVE SURGICAL, INC.,           | ·<br>)                         |
|-------------------------------------|--------------------------------|
|                                     | ) Opposition No. 91175319      |
| Opposer,                            | ) Serial No. 79/729 796        |
| V.                                  | ) Serial No. 78/728,786        |
| DAVINCI RADIOLOGY ASSOCIATES, P.L., | Published: December 19, 2006 ) |
| Applicant.                          | )                              |

# OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT

Pursuant to Federal Rule of Civil Procedure 34 and Trademark Rule of Practice 2.120, Opposer Intuitive Surgical, Inc. ("Opposer") hereby requests that Applicant DaVinci Radiology Associates, P.L. ("Applicant"), produce for inspection and copying the following documents at the offices of Sheppard Mullin Richter & Hampton, 17th Floor, Four Embarcadero Center, San Francisco, California 94111, within thirty (30) days of service hereof, or at such other time and place as the parties may mutually agree upon.

## **DEFINITIONS AND INSTRUCTIONS**

- A. For purposes of Opposer's First Set of Requests for Production of Documents and Things to Applicant, Opposer incorporates herein by reference the definitions set forth in Opposer's First Set of Interrogatories to Applicant served herewith.
- B. Interrogatory No. 3 means Interrogatory No. 3 of Opposer's First Set of Interrogatories to Applicant served herewith.

C. If a privilege is claimed as to any document, Applicant shall fully identify the document as to date, name and title of the author(s), the names and titles of all addressees, the subject matter of the document, and the general nature of the document (e.g., "letter," "memorandum," etc.). The ground for the claim of privilege shall also be given (e.g., "attorney-client privilege," "work product privilege," etc.).

### REQUESTS FOR PRODUCTION

#### REQUEST NO. 1:

All documents that refer or relate to the conception of Applicant's Mark.

## **REQUEST NO. 2:**

All documents that refer or relate to your selection process for Applicant's Mark.

#### **REQUEST NO. 3:**

All documents that refer or relate to your decision to adopt Applicant's Mark.

#### **REQUEST NO. 4:**

All documents that refer or relate to your decision to file with the United States Patent and Trademark Office an application to register Applicant's Mark.

#### REQUEST NO. 5:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Applicant's Mark,

#### **REQUEST NO. 6:**

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Applicant's Mark.

#### REQUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding protectability of Applicant's Mark.

#### **REQUEST NO. 8:**

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Applicant's Mark.

#### REQUEST NO. 9:

A sample or specimen showing trademark use of the mark for services, if any, identified in your response to Interrogatory No. 3.

#### REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

#### REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 12:

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Opposer but which were received by you.

#### REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have been intended for Opposer but which were received by you.

#### REQUEST NO. 16:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Opposer.

#### REQUEST NO. 17:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Opposer.

#### REQUEST NO. 18:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 19:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

## REQUEST NO. 20:

All documents that refer or relate to Opposer's Marks that were generated prior to the commencement of this Opposition Proceeding.

#### REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Applicant's Mark.

#### REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Applicant's Mark.

### REQUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Applicant's Mark.

#### REQUEST NO. 25:

All documents that refer or relate to any licenses that you have obtained regarding Applicant's Mark.

## REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Applicant's Mark.

## REQUEST NO. 27:

All documents identified in your responses to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

#### REQUEST NO. 28:

All documents relied on, referred to or consulted in responding to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

#### REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

Dated: July 16, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Michelle J. Hirth

Attorneys for Opposer

INTUITIVE SURGICAL, INC.

Four Embarcadero Center 17th Floor San Francisco, CA 94111 TEL: (415) 434-9100 FAX: (415) 434-3947



I hereby certify that a copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS

## FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT was served on

Applicant DaVinci Radiology Associates, P.L., by First Class U.S. Mail, postage prepaid, to:

Kirk Friedland, Esq. 505 S. Flagler Drive, Suite 1330 West Palm Beach, Florida 33401

Attorneys for Applicant

This 11 day of July, 2007.

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| `                             |                              |
|-------------------------------|------------------------------|
| INTUITIVE SURGICAL, INC.,     | Opposition No. 91175319      |
| Opposer,                      | Serial No. 78/728,786        |
| <b>v</b> .                    | Published: December 19, 2006 |
| DAVINCI RADIOLOGY ASSOCIATES, | Trademark: DAVINCI           |
| P.L.,                         | DIAGNOSTIC IMAGING & Design  |
| Applicant.                    | )<br>)                       |

#### OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

Pursuant to Federal Rule of Civil Procedure 36(a) and Trademark Rule of Practice 2.120, Opposer Intuitive Surgical, Inc. ("Opposer") hereby requests that Applicant DaVinci Radiology Associates, P.L. ("Applicant") serve upon Opposer its sworn answers to the request for admissions set forth below within thirty (30) days of service hereof. This request for admissions is intended to be continuing in nature and any information which may be discovered subsequent to service and filing of the answers to the request for admissions should be brought to the attention of Opposer as may be required by the Federal Rules of Civil Procedure, through supplemental answers, within a reasonable time following such discovery.

#### **DEFINITIONS**

The following definitions are to be used by Applicant in answering the request for admissions set forth below:

- A. "Applicant," "you" and "your" mean DaVinci Radiology Associates, P.L., any parent company, predecessors, subsidiaries or divisions, its agents and all other persons acting or purporting to act on its behalf, including all past and present officers, attorneys, servants, representatives, employees or other persons or entities exercising their discretion, making policy or decisions or participating in any of the foregoing functions.
- B. "Application" refers to and means United States Patent & Trademark Office Application Serial No. 78/728,786 filed on October 7, 2005.
- C. "Applicant's Mark" means the trademark DAVINCI DIAGNOSTIC IMAGING & Design, covered by U.S. Trademark Application Serial No. 78/728,786, which is the subject of this Opposition Proceeding.
- D. "Opposer" means Intuitive Surgical, Inc., any of its subsidiaries or divisions, predecessors, licensees, successors-in-interest, agents and all other person acting or purporting to act on its behalf.
- E. "Person" or "persons" mean both natural persons and corporate or other business entities, whether or not in the employ of Applicant. The acts and knowledge of a person are defined to include the acts and knowledge of that person's employees, representatives, agents and attorneys, including its licensee Medical Specialists of the Palm Beaches, Inc. (hereinafter referred to as "MSPB").
- F. "Offered" means to use in association with, whether in sales, advertising, promotion or other activities.

#### **REQUEST FOR ADMISSIONS**

## **REQUEST FOR ADMISSION NO. 1:**

Admit that your Application is for registration of the mark DAVINCI
DIAGNOSTIC IMAGING & Design is for use in connection with medical diagnostic imaging services.

#### **REQUEST FOR ADMISSION NO. 2:**

Admit that you have disclaimed the term "DIAGNOSTIC" as part of your Application for registration of DAVINCI DIAGNOSTIC IMAGING & Design.

#### **REQUEST FOR ADMISSION NO. 3:**

Admit that consumers of the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients, medical doctors, surgeons and other health care professionals.

#### **REQUEST FOR ADMISSION NO. 4:**

Admit that the medical diagnostic imaging services offered under the mark

DAVINCI DIAGNOSTIC IMAGING & Design include high-field magnetic resonance imaging,

CT scans, digital mammography, and PET/CT fusion (Positron Emission

Tomography/Computed Tomography).

#### **REQUEST FOR ADMISSION NO. 5:**

Admit that the mark DAVINCI DIAGNOSTIC IMAGING & Design was first used as a trademark in commerce in association with medical diagnostic imaging services on August 1, 2005.

DATED: November 26, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Ву

MICHELLE D. KAHN
MICHELLE J. HIRTH
Attorneys for Opposer
INTUITIVE SURGICAL, INC.

Four Embarcadero Center, 17<sup>th</sup> Floor San Francisco, CA 94111

TEL: (415) 434-9100

FAX: (415) 434-3947

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing OPPOSER'S FIRST REQUEST FOR

ADMISSIONS TO APPLICANT was served on Applicant, DaVinci Radiology Associates,

P.L., by First Class U.S. Mail, postage prepaid, to:

Matthew T. Vanden Bosch, Esq. 301 Clemetis Avenue, Suite 3000 West Palm Beach, FL 33401

Attorneys for Applicant

This 2 day of November, 2007.

Mironda Lewis

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| Opposer,  v.  DAVINCI RADIOLOGY ASSOCIATES, P.L.,  Applicant. | ) ) ) ) Opposition No. 91175319 ) Serial No. 78/728,786 ) Published: December 19, 2006 |
|---|--|
|   | Trademark: DAVINCI DIAGNOSTIC IMAGING & Design   |

#### OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rule of Practice 2.120,
Opposer Intuitive Surgical, Inc. ("Opposer") hereby requests that Applicant DaVinci Radiology
Associates, P.L. ("Applicant"), serve upon Opposer its sworn answers to the interrogatories set
forth below within thirty (30) days of service hereof. These interrogatories are intended to be
continuing in nature and any information which may be discovered subsequent to the service and
filing of the answers to the interrogatories should be brought to the attention of Applicant as may
be required by the Federal Rules of Civil Procedure, through supplemental answers, within a
reasonable time following such discovery.

#### **DEFINITIONS**

The following definitions are to be used by Applicant in answering the interrogatories set forth below:

A. "Opposer" means Intuitive Surgical, Inc.

- B. "You," your," "yourself" and "Applicant" mean Applicant DaVinci Radiology Associates, P.L., any parent company, predecessors, subsidiaries or divisions, its agents and all other persons acting or purporting to act on its behalf, including all past or present officers, attorneys, servants, representatives, employees or other persons or entities exercising their discretion, making policy or decisions or participating in any of the foregoing functions, including Medical Specialists of the Palm Beaches, Inc. (hereinafter referred to as "MSPB").
- C. "Applicant's Mark" means the trademark DAVINCI DIAGNOSTIC IMAGING & Design, covered by U.S. Trademark Application Serial No. 78/728,786, which is the subject of this Opposition Proceeding.
- D. "Person" or "persons" mean both natural persons and corporate or other business entities, whether or not in the employ of Applicant. The acts and knowledge of a person are defined to include the acts and knowledge of that person's employees, representatives, agents and attorneys.
- E. The terms "and" and "or" as used herein should be construed either conjunctively or disjunctively, whichever makes the request more inclusive.
- F. Medical Specialists of the Palm Beaches, Inc. means the entity to whom Applicant has licensed its trademark DAVINCI DIAGNOSTIC IMAGING & Design as set for in the Exclusive License Agreement dated August 1, 2005 and produced by Applicant to Opposer in this Opposition Proceeding.

#### **INTERROGATORIES**

#### INTERROGATORY NO. 1:

Describe with specificity the business relationship between Applicant and Medical Specialists of the Palm Beaches, Inc..

#### **INTERROGATORY NO. 2:**

Describe with particularity Dr. Howard Butler's affiliation with or relationship to Medical Specialists of the Palm Beaches, Inc., if any.

#### **INTERROGATORY NO. 3:**

Describe with particularity Dr. Thomas P. Boyle's affiliation with or relationship to Medical Specialists of the Palm Beaches, Inc., if any.

Dated: November <u>Q</u>, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

Michelle D. Kahn Michelle J. Hirth Attorneys for Opposer INTUITIVE SURGICAL, INC.

Four Embarcadero Center 17th Floor San Francisco, CA 94111 TEL: (415) 434-9100

FAX: (415) 434-3947

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposer's Second Set Of Interrogatories

To Applicant was served on Applicant DaVinci Radiology Associates, P.L., by First Class U.S.

Mail, postage prepaid, to:

Matthew T. Vanden Bosch, Esq. 301 Clemetis Avenue, Suite 3000 West Palm Beach, FL 33401

Attorneys for Applicant

This 26 day of November, 2007.

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

٧.

Opposer,

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

DAVINCI RADIOLOGY ASSOCIATES. P.L.,

Applicant.

## APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Pursuant to Federal Rule of Civil Procedure 33 and Trademark Rule of Practice 2.120, Applicant DaVinci Radiology Associates, P.L. ("Applicant") hereby requests that Opposer Intuitive Surgical, Inc. ("Opposer") serve upon Applicant its sworn answers to the interrogatories set forth below within thirty (30) days of service hereof. These interrogatories are intended to be continuing in nature and any information which may be discovered subsequent to the service and filing of the answers to the interrogatories should be brought to the attention of Applicant as may be required by the Federal Rules of Civil Procedure, through supplemental answers, within a reasonable time following such discovery.

#### **DEFINITIONS**

The following definitions are to be used by Opposer in answering the interrogatories set forth below:

- "Opposer" means Intuitive Surgical, Inc. A.
- "Opposer's Marks" mean the trademarks: (1) DA VINCI, covered by U.S. В.

Trademark Registration No. 2,628,871; and (2) DA VINCI S HD SURGICAL SYSTEM (Stylized), covered by U.S. Trademark Application Serial No. 76/665,748.

- C. "You," your," "yourself and "Opposer" mean Opposer Intuitive Surgical, Inc., any parent company, predecessors, subsidiaries or divisions, its agents and all other persons acting or purporting to act on its behalf, including all past or present officers, attorneys, servants, representatives, employees or other persons or entities exercising their discretion, making policy or decisions or participating in any of the foregoing functions.
- D. "Applicant's Mark" means the trademark DAVINCI DIAGNOSTIC IMAGING & Design, covered by U.S. Trademark Application Serial No. 78/728,786, which is the subject of this Opposition Proceeding.
- E. "Person" or "persons" mean both natural persons and corporate or other business entities, whether or not in the employ of Opposer. The acts and knowledge of a person are defined to include the acts and knowledge of that person's employees, representatives, agents and attorneys.
- F. "Consumer," "consumers" and the "consuming public" mean: (i) end-user beneficiaries of the goods and/or services offered under Opposer's Mark, including but not limited to patients and those upon whom diagnostic tests are performed; and (ii) physicians and health care providers, including but not limited to treating physicians and health care providers, referring physicians and health care providers, physicians and health care providers who order diagnostic tests, and physicians and health care providers who receive the results of diagnostic tests.
- G. The "trade" and "members of the trade" mean: (i) members of the medical, diagnostic and/or surgical professions; and (ii) physicians and health care providers who conduct, oversee and/or interpret diagnostic tests and test results.
  - H. "Document" or "documents" mean every writing or record of any type or

description or other tangible evidence that is or has been in your possession, custody or control, including without limitation: communications, correspondence, memoranda, electronic mail, telegrams, notes (whether handwritten, typed, stenographic, electronically recorded or otherwise), summaries, records of telephone conversations, tapes, files, publications, diaries, reports, minutes, customer lists, books, manuals, publications, notebooks, charts, plans, sketches, drawings, diagrams, pamphlets, brochures, manuals, blueprints, photographs, customer surveys, contracts, licenses, agreements, instruction manuals, user manuals, computer software, operation manuals, catalogs and catalog sheets, advertisements, including storyboards and scripts, circulars, trade letters, press releases, product releases, product descriptions, and shall include every copy where such copy is not identical to the original or where such copy contains any commentary or notation whatsoever that does not appear in the original. As used herein, "documents" also includes any document, whether or not in Opposer's possession, custody or control, and any document which may be considered privileged by Opposer, which document shall be identified to assist Applicant and the Trademark Trial and Appeal Board in determining whether a claim of privilege may properly be made as to such document.

- I. "Identify" or "identity" when used in reference to:
  - i. An individual, means to state his/her full name, present or last known home address (designating which), and present or last known position or business affiliation (designating which);
  - ii. A firm, company, corporation, partnership or other corporate entity, means
    to state its full name, state of incorporation (if any), and present or last
    known address (designating which);
  - iii. A document, means to state the date, author(s), sender, recipients of the original and all copies, the type of document (e.g., letter, memorandum, etc.), or some other means of identifying it and its present location or

custodian, the title or subject mater of said document, and, in the case of a document in your possession, custody or control, whether you will make it available for inspection and/or copying; and

iv. In the case of oral or other communications, the date, the communicator(s), the recipient(s) of the communication, and the nature of the communication.

The terms "and" and "or" as used herein should be construed either conjunctively or disjunctively, whichever makes the request more inclusive.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify the person or persons most familiar with the conception and adoption of Opposer's Mark.

#### **INTERROGATORY NO. 2:**

Describe the circumstances underlying the conception and adoption of Opposer's Mark by identifying the timing of the conception and adoption, the persons involved in the conception and adoption, the alternatives considered, and the factors considered in conceiving and adopting Opposer's Mark.

#### **INTERROGATORY NO. 3:**

Identify and describe all goods and services on which you use, have used or intend to use Opposer's Mark.

## **INTERROGATORY NO. 4:**

State the intended or potential uses for Opposer's goods and/or services offered under or in connection with Opposer's Mark.

#### **INTERROGATORY NO. 5:**

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

#### **INTERROGATORY NO. 6:**

State the date(s) upon which you began to use Opposer's Mark on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

#### **INTERROGATORY NO. 7:**

Other than the instant proceeding, identify all administrative and judicial proceedings in which you are or have been involved concerning Opposer's Mark by setting forth the identity of the parties, the title, docket number, tribunal name, and current status of the proceeding.

#### **INTERROGATORY NO. 8:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the trademark availability of Opposer's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

#### **INTERROGATORY NO. 9:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding consumer reaction to Opposer's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study,

search or investigation was conducted, and the results of the study, search or investigation.

#### INTERROGATORY NO. 10:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the protectability and/or enforceability of Opposer's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

#### **INTERROGATORY NO. 11:**

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

#### **INTERROGATORY NO. 12:**

Identify the person or persons most familiar with the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

#### **INTERROGATORY NO. 13:**

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

#### INTERROGATORY NO. 14:

Identify the person or persons most knowledgeable about the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

#### **INTERROGATORY NO. 15:**

Describe the circumstances under which Opposer first became aware of Applicant's Marks, including but not limited to stating the date(s) upon which Opposer first became aware of Applicant's Marks, identifying the person or persons at Opposer who first became aware of Applicant's Marks, and stating the manner in which Opposer first became aware of Applicant's Marks.

#### **INTERROGATORY NO. 16:**

Describe the consumers of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

#### **INTERROGATORY NO. 17:**

If you have ever received any communication(s) that expressed confusion as to a possible relationship between you and Applicant, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

#### **INTERROGATORY NO. 18:**

If you have ever received any communication(s) that expressed confusion as to a possible relationship between Applicant's Marks and the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you

received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

#### **INTERROGATORY NO. 19:**

Describe the testimony that you expect to elicit from each expert witness that you intend to call to testify in this proceeding by identifying the expert witness, the subject matter on which he or she is expected to testify, the substance of the facts and opinions about which he or she is expected to testify *and* the grounds for each such opinion.

#### **INTERROGATORY NO. 20:**

Describe the testimony that you expect to elicit from each lay witness that you intend to call to testify in this proceeding by setting forth the identity of the lay witness, the subject matter in which he or she is expected to testify, and a brief summary of the testimony expected.

#### **INTERROGATORY NO. 21:**

Describe all exhibits that you intend to rely upon in this proceeding by setting forth a brief statement of the contents and significance of all such exhibits.

#### **INTERROGATORY NO. 22:**

If you have sought or received opinions, legal or otherwise, regarding your right to use Opposer's Mark, describe each such opinion by setting forth the identity of the person(s) from whom you requested each such opinion, the identity of the person(s) who rendered each such opinion, a brief summary of each such opinion rendered, and a description of each document relied upon in the course of rendering each such opinion.

#### **INTERROGATORY NO. 23:**

Identify those person(s) who had more than a clerical role in answering the foregoing interrogatories.

#### **INTERROGATORY NO. 24:**

Identify those person(s) who had more than a clerical role in searching for documents responsive to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

Respectfully submitted,

Dated: September 20, 2007

Matthew T. Vanden Bosch, Esq.

Attorney for Applicant 301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S FIRST SET OF

INTERROGATORIES TO APPLICANT was served on Opposer Intuitive Surgical, Inc., by
First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center 17<sup>th</sup> Floor San Francisco, CA 94111

Attorneys for Opposer

This 20<sup>th</sup> day of July, 2007.

Matthew T. Vanden Bosch

Wander Brus

#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

Opposition No. 91175319

Serial No. 78/728,786

Published: December 19, 2006

DAVINCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

#### APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

Pursuant to Federal Rule of Civil Procedure 34 and Trademark Rule of Practice 2.120, Applicant DaVinci Radiology Associates, P.L. ("Applicant") hereby requests that Opposer, Intuitive Surgical, Inc. ("Opposer"), produce for inspection and copying the following documents at the offices of Matthew T. Vanden Bosch, Esq., 301 Clematis Avenue, West Palm Beach, Florida 33401, within thirty (30) days of service hereof, or at such other time and place as the parties may mutually agree upon.

#### **DEFINITIONS AND INSTRUCTIONS**

- For purposes of Applicant's First Set of Requests for Production of A. Documents and Things to Opposer, Applicant incorporates herein by reference the definitions set forth in Applicant's First Set of Interrogatories to Opposer served herewith.
- В. Interrogatory No. 3 means Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer served herewith. -

C. If a privilege is claimed as to any document, Oppopser shall fully identify the document as to date, name and title of the author(s), the names and titles of all addressees, the subject matter of the document, and the general nature of the document (e.g., "letter," "memorandum," etc.). The ground for the claim of privilege shall also be given (e.g., "attorney-client privilege," "work product privilege," etc.).

#### REQUESTS FOR PRODUCTION

#### REQUEST NO. 1:

All documents that refer or relate to the conception of Opposer's Mark.

#### REQUEST NO. 2:

All documents that refer or relate to your selection process for Opposer's Mark.

#### **REQUEST NO.3:**

All documents that refer or relate to your decision to adopt Opposer's Mark.

#### **REQUEST NO.4:**

All documents that refer or relate to your decision to file with the United States

Patent and Trademark Office an application to register Opposer's Mark.

#### REQUEST NO. 5:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Opposer's Mark, REQUEST NO. 6:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Opposer's Mark.

#### REQUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations

conducted by you or on your behalf regarding protectability of Opposer's Mark.

#### **REQUEST NO. 8:**

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Opposer's Mark.

#### **REQUEST NO. 8:**

A sample or specimen showing trademark use of the mark for services, if any, identified in your response to Interrogatory No. 3.

#### REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

#### REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 12:

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Applicant but which were received by you.

#### REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have

been intended for Applicant but which were received by you.

#### REQUEST NO. 16:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Applicant.

#### REQUEST NO. 17:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Applicant.

#### REQUEST NO. 18:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Applicant's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 19:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Applicant's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 20:

All documents that refer or relate to Applicant's Marks that were generated prior to the commencement of this Opposition Proceeding.

#### REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Opposer's Mark.

#### REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Opposer's Mark.

#### REQUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Opposer's Mark.

#### REQUEST NO. 25:

All documents that refer or relate to any licenses that you have obtained regarding Opposer's Mark.

#### REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Opposer's Mark.

#### REQUEST NO. 27:

All documents identified in your responses to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

#### REQUEST NO. 28:

All documents relied on, referred to or consulted in responding to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

#### REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

Respectfully submitted,

Dated: September 20, 2007

Matthew T. Vanden Bosch, Esq.

Attorney for Applicant 301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S FIRST SET OF

## REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO

**APPLICANT** was served on Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center 17<sup>th</sup> Floor San Francisco, CA 94111

Attorneys for Opposer

This 20<sup>th</sup> day of July, 2007.

Matthew T. Vanden Bosch

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

Opposition No. 91175319

Serial No. 78/728,786

Published: December 19, 2006

DAVINCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

## APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

Pursuant to Federal Rule of Civil Procedure 34 and Trademark Rule of Practice 2.120, Applicant DaVinci Radiology Associates, P.L. ("Applicant") hereby requests that Opposer, Intuitive Surgical, Inc. ("Opposer"), produce for inspection and copying the following documents at the offices of Matthew T. Vanden Bosch, Esq., 301 Clematis Avenue, West Palm Beach, Florida 33401, within thirty (30) days of service hereof, or at such other time and place as the parties may mutually agree upon.

#### **DEFINITIONS AND INSTRUCTIONS**

- A. For purposes of Applicant's First Set of Requests for Production of

  Documents and Things to Opposer, Applicant incorporates herein by reference the

  definitions set forth in Applicant's First Set of Interrogatories to Opposer served herewith.
- B. Interrogatory No. 3 means Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer served herewith. -

C. If a privilege is claimed as to any document, Oppopser shall fully identify the document as to date, name and title of the author(s), the names and titles of all addressees, the subject matter of the document, and the general nature of the document (e.g., "letter," "memorandum," etc.). The ground for the claim of privilege shall also be given (e.g., "attorney-client privilege," "work product privilege," etc.).

#### REQUESTS FOR PRODUCTION

#### **REQUEST NO. 1:**

All documents that refer or relate to the conception of Opposer's Mark.

#### **REQUEST NO. 2:**

All documents that refer or relate to your selection process for Opposer's Mark.

#### **REQUEST NO.3:**

All documents that refer or relate to your decision to adopt Opposer's Mark.

#### **REQUEST NO.4:**

All documents that refer or relate to your decision to file with the United States

Patent and Trademark Office an application to register Opposer's Mark.

#### REQUEST NO. 5:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Opposer's Mark, REQUEST NO. 6:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Opposer's Mark.

#### REQUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations

conducted by you or on your behalf regarding protectability of Opposer's Mark.

#### REOUEST NO. 8:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Opposer's Mark.

#### REQUEST NO. 8:

A sample or specimen showing trademark use of the mark for services, if any, identified in your response to Interrogatory No. 3.

#### REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

#### REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 12:

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Applicant but which were received by you.

#### REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have

been intended for Applicant but which were received by you.

#### **REQUEST NO. 16:**

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Applicant.

#### REQUEST NO. 17:

REQUEST NO. 18:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Applicant.

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Applicant's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 19:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Applicant's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 20:

All documents that refer or relate to Applicant's Marks that were generated prior to the commencement of this Opposition Proceeding.

#### REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

#### REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Opposer's Mark.

# REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Opposer's Mark.

# REQUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Opposer's Mark.

# REQUEST NO. 25:

All documents that refer or relate to any licenses that you have obtained regarding Opposer's Mark.

# REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Opposer's Mark.

#### REQUEST NO. 27:

All documents identified in your responses to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

# REQUEST NO. 28:

All documents relied on, referred to or consulted in responding to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

# REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

Respectfully submitted,

Dated: September 20, 2007

Matthew T. Vanden Bosch, Esq.

Attorney for Applicant 301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S FIRST SET OF

# REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO

APPLICANT was served on Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center 17<sup>th</sup> Floor San Francisco, CA 94111

Attorneys for Opposer

This 20th day of July, 2007.

Matthew T. Vanden Bosch

# **INTERROGATORY NO. 2:**

Describe the circumstances underlying the conception and adoption of Applicant's Mark by identifying the timing of the conception and adoption, the persons involved in the conception and adoption, the alternatives considered, and the factors considered in conceiving and adopting Applicant's Mark.

In 2002 Dr. Boyle developed the concept of a high-end imaging center that emphasized state-of-the-art imaging in an elegant setting. It was decided, by Dr. Boyle and Dr. Butler, that the name of the imaging center had to be memorable, unlike other imaging centers that had names associated with medical institutions or geographic locations.

It was decided that we would search for a name that had public recognition, connoted a high level of sophistication and intelligence, and would be memorable for its dissonance in the context of a medical imaging center. We developed several options including The Tesla Imaging Center, The Newton Center for Imaging, and the DaVinci Center. We settled on either DaVinci or Tesla. In late 2002, Dr. Butler read about the forthcoming blockbuster novel, *The DaVinci Code* and we decided that the DaVinci name would become more well-known because of the publicity associated with the book. Because this might help our public promotion, we chose DaVinci.

# **INTERROGATORY NO. 3:**

Identify and describe all goods and services on which you use, have used or intend to use Applicant's Mark.

By means of that certain Exclusive License Agreement, by and between Applicant and Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB"), dated August 1, 2005 (the "Agreement"), Applicant licensed MSPB to use exclusively Applicant's Mark in connection with MSPB's diagnostic imaging services. A copy of the Agreement is

attached hereto. MSPB consists of consisting of 50+ physicians licensed to practice medicine in the State of Florida. MSPB conducts its diagnostic imaging services only within Palm Beach County, Florida.

# **INTERROGATORY NO. 4:**

State the intended or potential uses for Applicant's goods and/or services offered under or in connection with Applicant's Mark.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. INTERROGATORY NO. 5:

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Applicant further avers that it has no particular knowledge of how MSPB markets or will market its diagnostic imaging services.

# **INTERROGATORY NO. 6:**

State the date(s) upon which you began to use Applicant's Mark on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. <a href="https://example.com/interrogatory.no.7">INTERROGATORY NO. 7:</a>

Other than the instant proceeding, identify all administrative and judicial proceedings in which you are or have been involved concerning Applicant's Mark by setting forth the identity of the parties, the title, docket number, tribunal name, and current status of the proceeding.

None.

# **INTERROGATORY NO. 8:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the trademark availability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

On November 12, 2003, Kirk Friedland, attorney at law, conducted an initial Federal trademark search for both "DaVinci" and "Da Vinci."

# **INTERROGATORY NO. 9:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding consumer reaction to Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

None.

# **INTERROGATORY NO. 10:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the protectability and/or enforceability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

None.

# **INTERROGATORY NO. 11:**

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant further avers that it has no particular knowledge of how MSPB promotes its diagnostic imaging services.

# **INTERROGATORY NO. 12:**

Identify the person or persons most familiar with the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Medical Specialists of the Palm Beaches, 5700 Lake Worth Road, Suite 204, Lake Worth, FL 33463, phone: 561-649-7000, fax: 561-964-4603, website: http://mspb.md/default.html.

# **INTERROGATORY NO. 13:**

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant further avers that it has no particular knowledge of the channels of trade through which MSPB's diagnostic imaging services move to reach end-users of said diagnostic imaging services.

#### **INTERROGATORY NO. 14:**

Identify the person or persons most knowledgeable about the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

Medical Specialists of the Palm Beaches, 5700 Lake Worth Road, Suite 204, Lake Worth, FL 33463, phone: 561-649-7000, fax: 561-964-4603, website: http://mspb.md/default.html.

# **INTERROGATORY NO. 15:**

Describe the circumstances under which Applicant first became aware of Opposer's Marks, including but not limited to stating the date(s) upon which Applicant first became aware of Opposer's Marks, identifying the person or persons at Applicant who first became aware of Opposer's Marks, and stating the manner in which Applicant first became aware of Opposer's Marks.

On November 12, 2003, Kirk Friedland, attorney at law, and former counsel to Applicant, conducted an initial Federal trademark search for both "DaVinci" and "Da Vinci" and found Opposer's Marks.

#### **INTERROGATORY NO. 16:**

Describe the consumers of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Applicant further avers that, to the best of its knowledge and belief, MSPB's consumers are medical patients.

# **INTERROGATORY NO. 17:**

If you have ever received any communication(s) that expressed confusion as to a possible relationship between you and Opposer, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g.,

member of the consuming public, member of the trade), and your response to the communication.

None.

#### INTERROGATORY NO. 18:

If you have ever received any communication(s) that expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

None.

#### **INTERROGATORY NO. 19:**

Describe the testimony that you expect to elicit from each expert witness that you intend to call to testify in this proceeding by identifying the expert witness, the subject matter on which he or she is expected to testify, the substance of the facts and opinions about which he or she is expected to testify *and* the grounds for each such opinion.

None.

#### **INTERROGATORY NO. 20:**

Describe the testimony that you expect to elicit from each lay witness that you intend to call to testify in this proceeding by setting forth the identity of the lay witness, the subject matter in which he or she is expected to testify, and a brief summary of the testimony expected.

None.

# **INTERROGATORY NO. 21:**

Describe all exhibits that you intend to rely upon in this proceeding by setting forth a brief statement of the contents and significance of all such exhibits.

None.

# **INTERROGATORY NO. 22:**

If you have sought or received opinions, legal or otherwise, regarding your right to use Applicant's Mark, describe each such opinion by setting forth the identity of the person(s) from whom you requested each such opinion, the identity of the person(s) who rendered each such opinion, a brief summary of each such opinion rendered, and a description of each document relied upon in the course of rendering each such opinion.

None.

# **INTERROGATORY NO. 23:**

Identify those person(s) who had more than a clerical role in answering the foregoing interrogatories.

Thomas P. Boyle, M.D., 17690 Lomond Court, Boca Raton, FL 33496: Present member of DRA.

# **INTERROGATORY NO. 24:**

Identify those person(s) who had more than a clerical role in searching for documents responsive to Opposer's First Set of Requests for Production of Documents and Things to Applicant.

Thomas P. Boyle, M.D., 17690 Lomond Court, Boca Raton, FL 33496: Present member of DRA.

Kirk Friedland, 505 South Flagler, West Palm Beach, FL 33401: Former legal counsel to DRA.

I swear or affirm that the above statements are true to the best of my information and belief.

Dated: September/8, 2007

Thomas P. Boyle, Authorized Member DaVinci Radiology Associates, P.L.

Respectfully submitted.

Dated: September 20, 2007

Matthew T. Vanden Bosch

Attorney at Law 301 Clematis Avenue

Suite 3000 West Palm Beach, FL 33401

(561) 736-4696

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO

# OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on

Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Embarcadero Four, 17th Floor
San Francisco, California 94111
Attorneys for Opposer
This th day of September, 2007.

Matthew T. Vanden Bosch

att Vander Brus

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

Opposition No. 91175319

Serial No. 78/728,786

Published: December 19, 2006

DAVINCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

# APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT

Applicant, DaVinci Radiology Associates, P.L., through undersigned counsel and pursuant to Federal Rule of Civil Procedure 34 and Trademark Rule of Practice 2.120, hereby serves its responses to Opposer, Intuitive Surgical, Inc., numbered 1 – 29 ("Request" or "Requests").

#### **GENERAL OBJECTIONS**

- 1. Applicant objects to any Request that requires Applicant to produce documents that are not within its possession, custody or control. No responses to the Requests will be made on behalf of persons other than Applicant or those in its control. For the purpose of these responses, Howard Butler, M.D. and Medical Specialists of the Palm Beaches, Inc. are outside Applicant's control.
- 2. Applicant objects to the Requests to the extent they are inconsistent with Applicant's obligations under the Federal Rules of Civil Procedure and Trademark Rules of Practice. Further, Applicant will respond based on its good faith, reasonably diligent

efforts to identify and obtain responsive documents, but it may not be reasonably practicable or even possible to identify and obtain "all" documents or "each" document that may exist.

- 3. Applicant objects to the production of any document that Applicant is precluded from disclosing by law, contract, agreement, rule, regulation or administrative order including but not limited to documents containing non-public personal financial information.
- 4. Applicant objects to the production of any document that is protected by any privilege or doctrine including, without limitation, the attorney-client privilege, the work product doctrine, trade secret privilege, or any other applicable privilege or non-disclosure doctrine. Applicant will produce a privilege log upon resolution of its objections to the scope of the document requests, as stated below.
- 5. Applicant objects to any attempt by the Opposer to dictate by "definition," "instruction," or otherwise what Applicant's obligations are to respond to discovery. Applicant will resolve such questions, if any arise, by adhering to its obligations under the Federal Rules of Civil Procedure and Trademark Rules of Practice.

#### **SPECIFIC RESPONSES**

#### REQUEST NO. 1:

All documents that refer or relate to the conception of Applicant's Mark.

Applicant will produce responsive documents from its records showing the conception of Applicant's Mark.

#### REQUEST NO. 2:

All documents that refer or relate to your selection process for Applicant's Mark.

Applicant will produce responsive documents from its records showing the selection process for Applicant's Mark.

# **REQUEST NO.3:**

All documents that refer or relate to your decision to adopt Applicant's Mark.

Applicant will produce responsive documents from its records relating to the decision to adopt Applicant's Mark.

# **REQUEST NO.4:**

All documents that refer or relate to your decision to file with the United States

Patent and Trademark Office an application to register Applicant's Mark.

Applicant will produce responsive documents from its records relating to the decision to file with the United States Patent and Trademark Office an application to register Applicant's Mark. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

#### REQUEST NO. 5:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Applicant's Mark.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 6:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Applicant's Mark.

Applicant will produce responsive documents from its records relating to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Applicant's Mark. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

#### REQUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding protectability of Applicant's Mark.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 8:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Applicant's Mark.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 8:

A sample or specimen showing trademark use of the mark for services, if any,

identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

#### **REQUEST NO. 12:**

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Opposer but which were received by you.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have

been intended for Opposer but which were received by you.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 16:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Opposer.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 17:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Opposer.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 18:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

#### **REQUEST NO. 19:**

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Opposer's Marks and the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 20:

All documents that refer or relate to Opposer's Marks that were generated prior to the commencement of this Opposition Proceeding.

Applicant will produce responsive documents from its records relating to Opposer's Marks that were generated prior to the commencement of this Opposition Proceeding. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

# REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Applicant's Mark.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Applicant's Mark.

Except for Opposer's objections, Applicant does not have any documents responsive to this request.

#### REQUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Applicant's Mark.

Applicant does not have any documents responsive to this request.

# REQUEST NO. 25:

All documents that refer or relate to any licenses that you have obtained regarding Applicant's Mark.

Applicant does not have any documents responsive to this request.

#### REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Applicant's Mark.

Applicant will produce responsive documents from its records relating to licenses that it has given regarding Applicant's Mark.

# REQUEST NO. 27:

All documents identified in your responses to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

Applicant will produce responsive documents from its records relating to its responses to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

# REQUEST NO. 28:

All documents relied on, referred to or consulted in responding to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding.

Applicant will produce responsive documents from its records which it referred to or consulted in responding to Opposer's First Set of Interrogatories to Applicant, served in this Opposition Proceeding. Applicant claims attorney-client privilege with respect to that certain letter, dated November 13, 2003, from Kirk Friedland, Esq., 505 South Flagler Drive, Suite 1330, West Palm Beach, Florida 33401, to Dr. Howard G. Butler, 5301 South Congress Avenue, Atlantis, Florida 33462, concerning a Federal trademark search.

## REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

Applicant will produce responsive documents from its records to this request except where an objection or privilege applies.

Respectfully submitted,

Date: September 20, 2007

Matthew T. Vanden Bosch, Esq.

Attorney for Applicant 301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S RESPONSE TO

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

AND THINGS TO APPLICANT was served on Opposer Intuitive Surgical, Inc., by

First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center 17<sup>th</sup> Floor San Francisco, CA 94111

Attorneys for Opposer

This 20th day of September, 2007.

Matthew T. Vanden Bosch

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

# RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER

Opposer Intuitive Surgical, Inc. ("Opposer") responds and objects to Applicant DaVinci Radiology Associates, P.L.'s ("Applicant") First Set of Interrogatories to Opposer as follows:

# PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. Opposer has made a reasonable and good faith effort to respond to Applicant's First Set of Interrogatories to Opposer (collectively these "Interrogatories" and singly an "Interrogatory") and has made a reasonable and good faith effort to locate responsive information. Opposer has not yet completed its discovery or preparation of its case in this Opposition Proceeding. These responses, therefore, are based upon information known to Opposer at this time and on documents presently available and specifically known to Opposer after a reasonable, diligent search. These Responses are made in a good faith effort to supply such information as is presently known but should in no way be to the prejudice of Opposer's right to produce subsequently discovered information or documents.

- 2. Each and every individual Interrogatory is subject to the general objections set forth herein and these general objections form a part of the responses to each and every Interrogatory. These general objections may be specifically interposed for the purpose of clarity in response to a particular Interrogatory but the failure to specifically incorporate any general objection should not be construed as a waiver of the objection.
- 3. Opposer objects to Applicant's Definitions to the extent that it attempts to impose on Opposer burdens or requirements in addition to those set forth in the Federal Rules of Civil Procedure and/or 37 Code of Federal Regulations ("C.F.R.") Part 2 or attempts to require Opposer to respond in any manner beyond that which is required by the Federal Rules of Civil Procedure and/or 37 C.F.R. Part 2.
- 4. Opposer objects to each Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.
- 5. Opposer objects to Definitions Paragraph C on the grounds that it is overly broad and unduly burdensome and to the extent that it results in Interrogatories that seek information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.
- 6. Opposer objects to Definitions Paragraph E to the extent that it results in Interrogatories that seek information protected from disclosure by the attorney-client privilege, the work product doctrine and other statutory or common law privileges.
- 7. Opposer objects to Definitions Paragraph F to the extent that it results in Interrogatories that are overly broad and unduly burdensome and neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible

evidence in that consumers of Opposer's goods offered under Opposer's Marks do not include "patients and those upon whom diagnostic test are performed."

8. Opposer objects to Definitions Paragraph I on the grounds that it is overly broad and unduly burdensome and to the extent it results in Interrogatories that seek information protected from disclosure as confidential personnel information or by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

#### **RESPONSES TO INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify the person or persons most familiar with the conception and adoption of Opposer's Mark (sic).

# RESPONSE TO INTERROGATORY NO. 1:

Opposer objects to this Interrogatory on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Steve Annon, Senior Director of Marketing at Intuitive Surgical, Inc.

# **INTERROGATORY NO. 2:**

Describe the circumstances underlying the conception and adoption of Opposer's Mark (sic) by identifying the timing of the conception and adoption, the persons involved in the

conception and adoption, the alternatives considered, and the factors considered in conceiving and adopting Opposer's Mark (sic).

# **RESPONSE TO INTERROGATORY NO. 2:**

Opposer objects to this Interrogatory on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound.

# **INTERROGATORY NO. 3:**

Identify and describe all goods and services on which you use, have used or intend to use Opposer's Mark (sic).

# **RESPONSE TO INTERROGATORY NO. 3:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) are used on or in association with surgical systems, instruments and associated devices used in robotic-assisted, minimally invasive surgery.

# **INTERROGATORY NO. 4:**

State the intended or potential uses for Opposer's goods and/or services offered under or in connection with Opposer's Mark (sic).

# **RESPONSE TO INTERROGATORY NO. 4:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Goods offered under Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEMS (Stylized) are used in minimally invasive, robotic-assisted surgery in a wide variety of surgical applications including but not limited to cardiac, urology, general surgery, thoracic, gynecologic and pediatric surgical procedures. *See* Opposer's Internet websites www.intuitivesurgical.com, www.davincisurgery.com and www.davinciprostatectomy.com.

# **INTERROGATORY NO. 5:**

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

# **RESPONSE TO INTERROGATORY NO. 5**:

Opposer's response to Interrogatory No. 3, which is itself compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds:

Goods offered under Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM woz-west:FHMM400438914.1

(Stylized) are offered to hospitals, surgical centers and physicians primarily through a direct sales force in the United States. Goods are promoted under these marks via trade shows, press releases, workshops for and training and other education of practitioners offered and presented by Opposer, attendance and presentations at meetings of medical associations and societies, including but not limited to the American Urological Association, the World Congress of Endourology, the American Heart Association, the American Association of Gynecological Laparoscopists, the International Gynecologic Oncology Robotics Symposia, the Minimally Invasive Robotics Association, and the Society of Thoracic Surgeons, and via Internet-based advertising including Opposer's Internet websites, www.intuitivesurgical.com, www.davincisurgery.com and www.davinciprostatectomy.com.

# **INTERROGATORY NO. 6:**

State the date(s) upon which you began to use Opposer's Mark (sic) on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

# **RESPONSE TO INTERROGATORY NO. 6:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and seeks information neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer's mark DA VINCI was first used on or in connection with Opposer's goods at least as early as July -67, 2000. Opposer's mark DA VINCI S HD SURGICAL SYSTEM (Stylized) was first used on or in connection with Opposer's goods at least as early as January 2006.

# INTERROGATORY NO. 7:

Other than the instant proceeding, identify all administrative and judicial proceedings in which you are or have been involved concerning Opposer's Mark (sic) by setting forth the identity of the parties, the title, docket number, tribunal name, and current status of the proceeding.

# **RESPONSE TO INTERROGATORY NO. 7:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and seeks information neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: (a) Intuitive Surgical, Inc. v. BioMerieux, B.V., Opposition Proceeding No. 91158726 before the U.S. Patent & Trademark Office, Trademark Trial and Appeal Board, Proceeding terminated upon filing of withdrawal of opposition by Intuitive Surgical, Inc.; (b) Intuitive Surgical, Inc. v. Ziemer Ophthalmic Systems AG, et al., U.S. District Court for the Northern District of California Case No. C07-01734 JSW, case dismissed upon filing of Request for Dismissal by Intuitive Surgical, Inc.

# **INTERROGATORY NO. 8:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the trademark availability of Opposer's Mark (sic) by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

# **RESPONSE TO INTERROGATORY NO. 8:**

Opposer objects to this Interrogatory on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: *See* February 2, 1999 Thomson & Thomson Research Report for DA VINCI produced in response to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

# INTERROGATORY NO. 9:

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding consumer reaction to Opposer's Mark (sic) by setting forth the date(s) on which the study, search or investigation was conducted, the identity of woz-west:fhm400438914.1

the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

RESPONSE TO INTERROGATORY NO. 9:

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound and to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No such studies, searches or investigations exist.

#### **INTERROGATORY NO. 10:**

Describe each study, search and investigation that is being or has been conducted or obtained by you or on your behalf regarding the protectability and/or enforceability of Opposer's Mark (sic) by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

# **RESPONSE TO INTERROGATORY NO. 10:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound woz-west:fhm400438914.1

and is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: *See* February 2, 1999 Thomson & Thomson Research Report for DA VINCI produced in response to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

## **INTERROGATORY NO. 11:**

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

#### **RESPONSE TO INTERROGATORY NO. 11:**

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: See Opposer's response to Interrogatory No. 5 of these Responses to Applicant's First Set of Interrogatories to Opposer.

#### **INTERROGATORY NO. 12:**

Identify the person or persons most familiar with the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

# **RESPONSE TO INTERROGATORY NO. 12:**

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Steve Annon, Senior Director of Marketing at Intuitive Surgical, Inc.

# **INTERROGATORY NO. 13:**

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

# **RESPONSE TO INTERROGATORY NO. 13:**

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer's goods offered under the marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) are offered in the United States primarily via a direct sales force to hospitals, surgical centers and physicians. *See also* Response to Interrogatory No. 5 of these Responses to Applicant's First Set of Interrogatories to Opposer.

# **INTERROGATORY NO. 14:**

Identify the person or persons most knowledgeable about the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users of said goods and/or services.

# **RESPONSE TO INTERROGATORY NO. 14:**

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Jim Alecxih, Vice President of U.S. Sales at Intuitive Surgical, Inc.

#### **INTERROGATORY NO. 15:**

Describe the circumstances under which Opposer first became aware of Applicant's

Marks (sic), including but not limited to stating the date(s) upon which Opposer first became

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aware of Applicant's Marks (sic), identifying the person or persons at Applicant who first became aware of Applicant's Marks (sic), and stating the manner in which Opposer first became aware of Applicant's Marks (sic).

#### **RESPONSE TO INTERROGATORY NO. 15:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Applicant's Marks[.]" For purposes of this Interrogatory, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of these Interrogatories. Opposer objects to this Interrogatory on the ground that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this Interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer first became aware of Applicant's Mark through a Watch Notice that Opposer has in place for its DA VINCI mark and then again became aware of Applicant's Mark when it was published for opposition in the Official Gazette on December 19, 2006.

#### **INTERROGATORY NO. 16:**

Describe the consumers of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

#### **RESPONSE TO INTERROGATORY NO. 16:**

Opposer objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Consumers of goods offered under Opposer's marks DA VINCI and DA VINCI S HD woz-west:FHM400438914.1

SURGICAL SYSTEM (Stylized) are medical and health care professionals, including surgeons, doctors, hospital administrators and administrators of outpatient and surgical centers.

# **INTERROGATORY NO. 17**:

If you have ever received any communication(s) that expressed confusion as to a possible relationship between you and Applicant, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

# **RESPONSE TO INTERROGATORY NO. 17:**

Subject to and without waiving the General Objections set forth above, Opposer responds: Not applicable.

#### **INTERROGATORY NO. 18:**

If you have ever received any communication(s) that expressed confusion as to a possible relationship between Applicant's Marks (sic) and the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories, describe each communication by setting forth the date on which you received such communication, the type of communication (e.g., oral or written), the substance of the communication, the identity of the person(s) from whom you received the communication, the class of the person(s) from whom you received the communication (e.g., member of the consuming public, member of the trade), and your response to the communication.

# **RESPONSE TO INTERROGATORY NO. 18:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Applicant's Marks[.]" For purposes of this Interrogatory, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of these Interrogatories. Opposer further objects to this Interrogatory on the ground that it is compound. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Not applicable.

# **INTERROGATORY NO. 19:**

Describe the testimony that you expect to elicit from each expert witness that you intend to call to testify in this proceeding by identifying the expert witness, the subject matter on which he or she is expected to testify, the substance of the facts and opinions about which he or she is expected to testify and the grounds for each such opinion.

# **RESPONSE TO INTERROGATORY NO. 19:**

Opposer objects to this Interrogatory on the grounds that it is compound and premature. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce the names of expert witnesses Opposer intends to call to testify in this Proceeding in due course.

#### **INTERROGATORY NO. 20:**

Describe the testimony that you expect to elicit from each lay witness that you intend to call to testify in this proceeding by setting forth the identity of the lay witness, the subject matter in which he or she is expected to testify, and a brief summary of the testimony expected.

# **RESPONSE TO INTERROGATORY NO. 20:**

Opposer objects to this Interrogatory on the grounds that it is compound and premature. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce the names of lay witnesses Opposer intends to call to testify in this Proceeding in due course.

# **INTERROGATORY NO. 21:**

Describe all exhibits that you intend to rely upon in this proceeding by setting forth a brief statement of the contents and significance of all such exhibits.

# **RESPONSE TO INTERROGATORY NO. 21:**

Opposer objects to this Interrogatory on the grounds that it is compound and premature. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will provide exhibits it intends to rely upon in this Proceeding in due course.

#### **INTERROGATORY NO. 22:**

If you have sought or received opinions, legal or otherwise, regarding your right to use Opposer's Mark (sic), describe each such opinion by setting forth the identity of the person(s) from whom you requested each such opinion, the identity of the person(s) who rendered each such opinion, a brief summary of each such opinion rendered, and a description of each document relied upon in the course of rendering each such opinion.

#### **RESPONSE TO INTERROGATORY NO. 22:**

Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Interrogatory, Opposer interprets

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"Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of these Interrogatories. Opposer further objects to this Interrogatory on the grounds that it is compound, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine or any other statutory or common law privilege.

#### **INTERROGATORY NO. 23:**

Identify those person(s) who had more than a clerical role in answering the foregoing interrogatories.

# **RESPONSE TO INTERROGATORY NO. 23:**

Subject to and without waiving the General Objections set forth above, Opposer responds: Opposer identifies Frank Nguyen, Vice President, Intellectual Property and Licensing at Intuitive Surgical, Inc., and Michelle D. Kahn and Michelle J. Hirth of Sheppard, Mullin, Richter & Hampton, LLP, counsel to Intuitive Surgical, Inc.

#### **INTERROGATORY NO. 24:**

Identify those person(s) who had more than a clerical role in searching for documents responsive to Applicant's First Set of Requests for Production of Documents and Things to Opposer.

# **RESPONSE TO INTERROGATORY NO. 24:**

Subject to and without waiving the General Objections set forth above, Opposer responds: Opposer identifies Frank Nguyen, Vice President, Intellectual Property and Licensing

at Intuitive Surgical, Inc., and Michelle D. Kahn and Michelle J. Hirth of Sheppard, Mullin, Richter & Hampton, LLP, counsel to Intuitive Surgical, Inc.

Dated: November 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Ву

Michelle D. Kahn Michelle J. Hirth Attorneys for Opposer INTUITIVE SURGICAL, INC.

Four Embarcadero Center 17th Floor San Francisco, CA 94111

TEL: (415) 434-9100 FAX: (415) 434-3947

# **VERIFICATION**

I, John F. Runkel, declare as follows:

I am in the Senior Vice President and General Counsel of Intuitive Surgical, Inc.,

Opposer in this Opposition Proceeding, and am authorized to make this verification on behalf of
Intuitive Surgical, Inc.

I have read Intuitive Surgical, Inc.'s Responses to Applicant's First Set of Interrogatories to Opposer, and know the contents thereof. The responses were prepared from information gathered by Intuitive Surgical, Inc. and its agents and from a review of various files and records. Subject to the above limitations, I am informed and believe and on that basis allege that the responses given are true and correct.

Having been warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the document resulting therefrom, I declare that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

I declare under penalty of perjury that the above is true and correct and to the best of my knowledge and belief.

Executed this 24n day of November, 2007, at Sunnyvale, California.

Idin F Runkel

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing RESPONSES TO APPLICANT'S FIRST

SET OF INTERROGATORIES TO OPPOSER was served on Applicant DaVinci Radiology

Associates, P.L., by First Class U.S. Mail, postage prepaid, to:

Matthew T. Vanden Bosch, Esq. 301 Clematis Avenue, Suite 3000 West Palm Beach, Florida 33401

Attorneys for Applicant

This 26 day of November, 2007.

Mironda Lewis

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| INTUITIVE SURGICAL, INC., Opposer,  | ) ) Opposition No. 91175319 ) Serial No. 78/728,786 |
|-------------------------------------|---|
| DAVINCI RADIOLOGY ASSOCIATES, P.L., | Published: December 19, 2006 )                      |
| Applicant.                          | )<br>-  |

# RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER

Opposer Intuitive Surgical, Inc. ("Opposer") responds and objects to Applicant

DaVinci Radiology Associates, P.L.'s ("Applicant") First Requests for Production of Documents
and Things to Opposer as follows:

# PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. Opposer has made a reasonable and good faith effort to respond to Applicant's First Requests for Production of Documents and Things to Opposer (collectively these "Requests" and singly a "Request") and has made a reasonable and good faith effort to locate responsive information. Opposer has not yet completed its discovery or preparation of its case in this Opposition Proceeding. These responses, therefore, are based upon information known to Opposer at this time and on documents presently available and specifically known to Opposer after a reasonable, diligent search. These Responses are made in a good faith effort to

supply such information as is presently known but should in no way be to the prejudice of Opposer's right to produce subsequently discovered information or documents.

- 2. Each and every individual Request is subject to the general objections set forth herein and these general objections form a part of the responses to each and every Request. These general objections may be specifically interposed for the purpose of clarity in response to a particular Request but the failure to specifically incorporate any general objection should not be construed as a waiver of the objection.
- 3. Opposer objects to Applicant's Definitions and Instructions to the extent that it attempts to impose on Opposer burdens or requirements in addition to those set forth in the Federal Rules of Civil Procedure and/or 37 Code of Federal Regulations ("C.F.R.") Part 2 or attempts to require Opposer to respond in any manner beyond that which is required by the Federal Rules of Civil Procedure and/or 37 C.F.R. Part 2.
- 4. Opposer objects to each Request to the extent that it seeks information or documents protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.
- 5. Opposer objects to Definitions Paragraph C of Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, on the grounds that it is overly broad and unduly burdensome and to the extent that it results in Requests that seek documents protected from disclosure by the attorney-client privilege, work product doctrine or other statutory or common law privilege.
- 6. Opposer objects to Definitions Paragraph E Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, to the extent that it results in Requests that

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seek documents protected from disclosure by the attorney-client privilege, the work product doctrine and other statutory or common law privileges.

- 7. Opposer objects to Definitions Paragraph F of Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, to the extent that it results in Requests that are overly broad and unduly burdensome and neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence in that consumers of Opposer's goods offered under Opposer's Marks do not include "patients and those upon whom diagnostic test are performed."
- 8. Opposer objects to Definitions Paragraph I of Applicant's First Set of Interrogatories to Opposer, incorporated by reference in Applicant's First Set of Requests for Production of Documents and Things to Opposer, on the grounds that it is overly broad and unduly burdensome and to the extent it results in Requests that seek documents protected from disclosure as confidential personnel information or by the attorney-client privilege, work product doctrine or other statutory or common law privilege.

# RESPONSES TO REQUESTS FOR PRODUCTION

# **REQUEST NO. 1:**

All documents that refer or relate to the conception of Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 1:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to

mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the ground that it is compound.

### REQUEST NO. 2:

All documents that refer or relate to your selection process for Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 2:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege.

#### REQUEST NO. 3:

All documents that refer or relate to your decision to adopt Opposer's Mark (sic).

RESPONSE TO REQUEST NO. 3:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of

Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorneyclient privilege, work product doctrine or any other statutory or common law privilege.

## REQUEST NO. 4:

All documents that refer or relate to your decision to file with the United States Patent and Trademark Office an application to register Opposer's Mark (sic).

# **RESPONSE TO REQUEST NO. 4:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorneyclient privilege, work product doctrine or any other statutory or common law privilege.

#### REQUEST NO. 5:

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All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding consumer reaction to Opposer's Mark (sic).

# RESPONSE TO REQUEST NO. 5:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as -5defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer.

Opposer further objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer is not aware of any responsive documents within its possession, custody or control at this time.

# REQUEST NO. 6:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding trademark availability of Opposer's Mark (sic).

# **RESPONSE TO REQUEST NO. 6:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

#### REOUEST NO. 7:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding protectability of Opposer's Mark (sic).

# **RESPONSE TO REQUEST NO. 7:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

# REOUEST NO. 8:

All documents that refer or relate to any studies, searches or investigations conducted by you or on your behalf regarding enforceability of Opposer's Mark (sic).

# **RESPONSE TO REQUEST NO. 8:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Opposer further objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product

doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

<u>REQUEST NO. 9</u>: [second Request No. 8 in Applicant's First Set of Requests for Production of Documents and Things to Opposer; renumbered here as Request No. 9]

A sample or specimen showing trademark use of the mark for services, if any, identified in your response to Interrogatory No. 3.

## **RESPONSE TO REQUEST NO. 9:**

Opposer objects to this Request on the grounds that it is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, is vague and ambiguous as to the undefined term "mark[,]" and is compound as it incorporates here by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. For purposes of this Request, Opposer interprets "mark" to mean "Opposer's Marks" as defined in Definition Paragraph B of Applicant's First Set of Interrogatories to Opposer. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Not applicable. No services are identified in Opposer's response to Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer as no services are identified that are not inherent to the provision of goods under Opposer's Marks.

## REQUEST NO. 10:

A sample or specimen of the goods, if any, identified in your response to Interrogatory No. 3.

# **RESPONSE TO REQUEST NO. 10:**

Opposer objects to this Request on the grounds that it is unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: The goods offered under Opposer's marks DA VINCI and DA VINCI S HD SURGICAL SYSTEM (Stylized) are relatively large in size and quite costly. Accordingly, it is impracticable and overly burdensome for Opposer to produce samples or specimens of the goods offered under its marks. See Opposer's Internet website, <a href="https://www.intuitivesurgical.com">www.intuitivesurgical.com</a>, where Applicant may view photographs and videos showing Opposer's goods.

# REQUEST NO. 11:

All documents that refer or relate to the channels of trade for the goods and/or services identified in your response to Interrogatory No. 3.

# **RESPONSE TO REQUEST NO. 11:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, it is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged/confidential, responsive documents within

its possession, custody and control. *See also* Opposer's Internet website, www.intuitivesurgical.com.

#### REQUEST NO. 12:

Copies of all promotional material distributed for the goods and/or services identified in your response to Interrogatory No. 3.

# **RESPONSE TO REQUEST NO. 12:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged, responsive documents within its possession, custody and control. See also Opposer's Internet websites <a href="https://www.intuitivesurgical.com">www.intuitivesurgical.com</a>, <a href="https://www.davincisurgery.com">www.davincisurgery.com</a> and <a href="https://www.davinciprostatectomy.com">www.davinciprostatectomy.com</a>.

# REQUEST NO. 13:

All documents that refer or relate to unsolicited media coverage of the goods and/or services identified in your response to Interrogatory No. 3.

# **RESPONSE TO REQUEST NO. 13:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound, and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing wog-west:fhm400438920.1

objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged, responsive documents within its possession, custody and control. *See also* Opposer's Internet website, <a href="www.intuitivesurgical.com">www.intuitivesurgical.com</a>, featuring news stories by CBS News, U.S. News & World Report, Business Week and Newsweek.

# REQUEST NO. 14:

All documents that constitute, refer or relate to communications, which appear to have been intended for Applicant but which were received by you.

#### **RESPONSE TO REQUEST NO. 14:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

#### REQUEST NO. 15:

All documents that constitute, refer or relate to materials, which appear to have been intended for Applicant but which were received by you.

#### **RESPONSE TO REQUEST NO. 15:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "materials[,]" and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the woz-west:fhm400438920.1

foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

## REQUEST NO. 16:

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between you and Applicant.

# **RESPONSE TO REQUEST NO. 16:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and to the extent that is seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Opposer further objects to this Request to the extent that it seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence as a result of the use of the term "consuming public" as defined in Definitions Paragraph F of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

# REQUEST NO. 17:

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between you and Applicant.

# **RESPONSE TO REQUEST NO. 17:**

Opposer objects to this Request on the ground that it is overly broad and unduly burdensome and to the extent that it seeks documents protected from disclosure by the attorney-woz-west:fhmwood38920.1 -12-

client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

## **REQUEST NO. 18:**

All documents that refer or relate to any instance in which any member of the consuming public has expressed confusion as to a possible relationship between Applicant's Marks (sic) and the goods and/or services identified in your response to Interrogatory No. 3.

#### **RESPONSE TO REQUEST NO. 18:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Applicant's Marks[,]" and to the extent that is seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. For purposes of this Request, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer further objects to this Request to the extent that it seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence as a result of the use of the term "consuming public" as defined in Definitions Paragraph F of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the ground that it is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and

General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

# **REQUEST NO. 19:**

All documents that refer or relate to any instance in which any member of the trade has expressed confusion as to a possible relationship between Applicant's Marks (sic) and the goods and/or services identified in your response to Interrogatory No. 3.

## **RESPONSE TO REQUEST NO. 19:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Applicant's Marks[,]" and to the extent that is seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. For purposes of this Request, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the ground that it is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

#### **REOUEST NO. 20:**

All documents that refer or relate to Applicant's Marks (sic) that were generated prior to the commencement of this Opposition Proceeding.

# **RESPONSE TO REQUEST NO. 20:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Applicant's Marks[,]" and to the extent that is seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. For purposes of this Request, Opposer interprets "Applicant's Marks" to mean "Applicant's Mark" as defined in Definitions Paragraph D of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: No non-privileged, responsive documents are within Opposer's possession, custody or control at this time. See Privilege Log of Opposer Intuitive Surgical, Inc. served herewith.

## REQUEST NO. 21:

All documents that refer or relate to your promotion of the goods and/or services identified in your response to Interrogatory No. 3.

# **RESPONSE TO REQUEST NO. 21:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is compound as it incorporates by reference Interrogatory No. 3 of Applicant's First Set of Interrogatories to Opposer, which is itself compound, and to the extent that it calls for documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged/confidential, responsive documents within its possession, custody and control.

## REQUEST NO. 22:

A copy of each advertisement you have published or caused to be published that displays Opposer's Mark (sic).

## **RESPONSE TO REQUEST NO. 22:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the ground that it is compound. Subject to and without waiving the foregoing objections and General Objections set forth above. Opposer responds: Opposer will produce a representative sampling of responsive documents within its possession, custody and control.

# REQUEST NO. 23:

All documents that refer or relate to any third party objections to your use or registration of Opposer's Mark (sic).

# **RESPONSE TO REQUEST NO. 23:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, is vague and ambiguous as to the undefined term "objections[,]" and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "objections" to mean cease and desist correspondence, Opposition or Cancellation Proceedings before the U.S. Patent & Trademark Office Trademark Trial and Appeal Board and lawsuits initiated in Federal court. For purposes

of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the grounds that it is compound and to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

# REOUEST NO. 24:

All documents that refer or relate to any objection you have made to the use or registration by another of any trademark, service mark or trade name comprised of any term alleged to be confusingly similar to Opposer's Mark (sic).

# **RESPONSE TO REQUEST NO. 24:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "objection" to mean cease and desist correspondence, Opposition or Cancellation Proceedings before the U.S. Patent & Trademark Office Trademark Trial and Appeal Board and lawsuits initiated in Federal court. For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer also objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, and to the extent that its seeks documents protected from disclosure by the attorney-

client privilege, work product doctrine or any other statutory or common law privilege. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents within its possession, custody and control.

### **REQUEST NO. 25:**

All documents that refer or relate to any licenses that you have obtained regarding Opposer's Mark (sic).

## **RESPONSE TO REQUEST NO. 25:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer objects to this Request as overly broad and unduly burdensome and vague and ambiguous as to geographic location. For purposes of this Request, Opposer will interpret this Request to refer to licenses pertaining to the United States only. Opposer also objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: No responsive documents are within Opposer's possession, custody or control at this time.

## REQUEST NO. 26:

All documents that refer or relate to any licenses that you have given regarding Opposer's Mark (sic).

#### **RESPONSE TO REQUEST NO. 26:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, and is vague and ambiguous as to the undefined term "Opposer's Mark[.]" For purposes of this Request, Opposer interprets "Opposer's Mark" to mean "Opposer's Marks" as defined in Definitions Paragraph B of Applicant's First Set of Interrogatories to Opposer, incorporated herein by reference. Opposer objects to this Request as overly broad and unduly burdensome and vague and ambiguous as to geographic location. For purposes of this Request, Opposer will interpret this Request to refer to licenses pertaining to the United States only. Opposer also objects to this Request on the grounds that it is compound, seeks documents neither relevant to the subject matter of this Proceeding nor reasonably calculated to lead to the discovery of admissible evidence, to the extent that it seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce non-privileged/confidential documents within its possession, custody and control.

## REQUEST NO. 27:

All documents identified in your responses to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

#### **RESPONSE TO REQUEST NO. 27:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce non-privileged, responsive documents, if any were identified in its responses to Applicant's First Set of Interrogatories to Opposer, within its possession, custody and control.

## **REQUEST NO. 28:**

All documents relied on, referred to or consulted in responding to Applicant's First Set of Interrogatories to Opposer, served in this Opposition Proceeding.

#### **RESPONSE TO REQUEST NO. 28:**

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome, to the extent that its seeks documents protected from disclosure by the attorney-client privilege, work product doctrine or any other statutory or common law privilege, and to the extent that it seeks documents protected from disclosure as confidential business information. Subject to and without waiving the foregoing objections and the General Objections set forth above, Opposer responds: Opposer will produce a representative sampling of non-privileged/confidential, responsive documents within its possession, custody or control.

#### REQUEST NO. 29:

All documents that you intend to rely upon in this Opposition Proceeding.

RESPONSE TO REQUEST NO. 29:

Opposer objects to this Request on the grounds that it is overly broad and unduly burdensome and premature. Subject to and without waiving the foregoing objections and the woz-west:fhm400438920.1 -20-

General Objections set forth above, Opposer responds: Opposer will produce documents it intends to rely upon in this Opposition Proceeding, and that have not been produced in response to these Requests, in due course.

Dated: November 26, 2007

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Ву

Michelle D. Kahn Michelle J. Hirth Attorneys for Opposer INTUITIVE SURGICAL, INC.

Four Embarcadero Center 17th Floor San Francisco, CA 94111

TEL: (415) 434-9100 FAX: (415) 434-3947

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing RESPONSES TO APPLICANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER was served on Applicant DaVinci Radiology Associates, P.L, by First Class U.S. Mail, postage prepaid, to:

Matthew T. Vanden Bosch, Esq. 301 Clematis Avenue, Suite 3000 West Palm Beach, Florida 33401

Attorneys for Applicant

This 26th day of November, 2007.

Mironda Lewis

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposition No. 91175319

Opposer,

Serial No. 78/728,786

v.

Published: December 19, 2006

DAVTNCI RADIOLOGY ASSOCIATES, P.L.,

Trademark: DAVINCI DIAGNOSTIC

Applicant.

**IMAGING & Design** 

#### APPLICANT'S RESPONSE TO

# OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

NOW COMES, Applicant, DaVinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its response to Opposer's First Request for Admissions to Applicant, responds as follows:

## REQUEST FOR ADMISSIONS

## **REQUEST FOR ADMISSION NO. 1:**

Admit that your Application is for registration of the mark- DAVINCI DIAGNOSTIC IMAGING & Design is for use in connection with medical diagnostic imaging services.

Response: Admitted.

## **REQUEST FOR ADMISSION NO. 2:**

Admit that you have disclaimed the term "DIAGNOSTIC" as part of your Application for registration of DAVINCI DIAGNOSTIC IMAGING & Design.

Response: Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that consumers of the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients, medical doctors, surgeons and other health care professionals.

Response: Denied. Consumers of the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients.

REQUEST FOR ADMISSION NO. 4:

Admit that the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include high--field magnetic resonance imaging, CT scans, digital mammography, and PET, CT fusion (Positron Emission Tomography/Computed Tomography).

Response: Admitted that the medical diagnostic imaging services offered under the mark DAVINCI DIAGNOSTIC IMAGING & Design include, but are not limited to, high--field magnetic resonance imaging, CT scans, digital mammography, and PET, CT fusion (Positron Emission Tomography/Computed Tomography).

REQUEST FOR ADMISSION NO. 5:

Admit that the mark DAVINCI DIAGNOSTIC IMAGING & Design was first used as a trademark in commerce in association with medical diagnostic imaging services on August 1, 2005.

Response: Admitted.

Respectfully submitted,

DATED: January 15, 2008

Matthew T. Vanden Bosch

Attorney at Law

301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S

FIRST REQUEST FOR ADMISSIONS TO APPLICANT was served on Opposer, Intuitive

Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center 17<sup>th</sup> Floor San Francisco, CA 94111

Attorneys for Opposer

This 15th day of January, 200%

Matthew T. Vanden Bosch

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposition No. 91175319

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DAVTNCI RADIOLOGY ASSOCIATES, P.L.,

Trademark: DAVINCI DIAGNOSTIC

Applicant.

IMAGING & Design

#### APPLICANT'S RESPONSE TO

# OPPOSER'S FIRST REQUEST FOR ADMISSIONS TO APPLICANT

NOW COMES, Applicant, DaVinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its response to Opposer's First Request for Admissions to Applicant, responds as follows:

#### **REQUEST FOR ADMISSIONS**

## **REQUEST FOR ADMISSION NO. 1:**

Admit that your Application is for registration of the mark- DAVINCI DIAGNOSTIC IMAGING & Design is for use in connection with medical diagnostic imaging services.

Response: Admitted.

#### **REQUEST FOR ADMISSION NO. 2:**

Admit that you have disclaimed the term "DIAGNOSTIC" as part of your Application for registration of DAVINCI DIAGNOSTIC IMAGING & Design.

Response: Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that consumers of the medical diagnostic imaging services offered under

the mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients, medical

doctors, surgeons and other health care professionals.

Response: Denied. Consumers of the medical diagnostic imaging services offered under the

mark DAVINCI DIAGNOSTIC IMAGING & Design include medical patients.

REQUEST FOR ADMISSION NO. 4:

Admit that the medical diagnostic imaging services offered under the mark DAVINCI

DIAGNOSTIC IMAGING & Design include high--field magnetic resonance imaging, CT scans,

digital mammography, and PET, CT fusion (Positron Emission Tomography/Computed

Tomography).

Response: Admitted that the medical diagnostic imaging services offered under the mark

DAVINCI DIAGNOSTIC IMAGING & Design include, but are not limited to, high-field

magnetic resonance imaging, CT scans, digital mammography, and PET, CT fusion (Positron

Emission Tomography/Computed Tomography).

**REQUEST FOR ADMISSION NO. 5:** 

Admit that the mark DAVINCI DIAGNOSTIC IMAGING & Design was first used as a

trademark in commerce in association with medical diagnostic imaging services on

August 1, 2005.

Response: Admitted.

Respectfully submitted,

DATED: January 15, 2008

Matthew T. Vanden Bosch

Attorney at Law

301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S

FIRST REQUEST FOR ADMISSIONS TO APPLICANT was served on Opposer, Intuitive

Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth Sheppard, Mullin, Richter & Hampton, LLP Four Embarcadero Center 17<sup>th</sup> Floor San Francisco, CA 94111

Attorneys for Opposer

This 15th day of January, 200%

Matthew T Vanden Bosch

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

Opposer,

Opposition No, 91175319

DAVINCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

Serial No.78/728,786

Published: December 19, 2006

Trademark: DAVINCI

DIAGNOSTIC IMAGING &

Design

# APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT

NOW COMES, Applicant, Davinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its response to Opposer's Second Set of Interrogatories to Applicant, responds as follows:

#### **INTERROGATORY NO. 1:**

Describe with specificity the business relationship between Applicant and Medical Specialists of the Palm. Beaches, Inc.

Applicant provides diagnostic imaging services to MSPB under a contract.

INTERROGATORY NO. 2:

Describe with particularity Dr. Howard Butler's affiliation with or relationship to Medical Specialists of the Palm Beaches, Inc., if any.

None.

Describe with particularity Dr. Thomas P. Boyle's affiliation with or relationship to Medical Specialists of the Palm Beaches, Inc., if any.

Dr. Boyle is an employee of MSPB as of December 1, 2007, providing professional medical services specifically involving varicose vein treatment, non-surgical aesthetic and cosmetic and phlebology procedures (including, without limitation, botox, lasers, fillers, thermage, and ultrasound. Dr. Boyle provides these services as a member of the operating division of MSPB sometimes referred to as the "V-Boutique."

I swear or affirm that the above statements are true to the best of my information and belief.

Dated: January 15, 2008

Thomas P. Boyle, Authorized Member,

DaVinci Radiology Associates, P.L.

Respectfully submitted,

Dated: January 15, 2008

Matthew T. Vanden Bosch

Attorney at Law 301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

# CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO

OPPOSER'S SECOND SET OF INTERROGATORIES TO APPLICANT was served on

Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth, Esq. Sheppard, Mullin, Richter & Hampton, LLP Embarcadero Four, 17th Floor San Francisco, California 94111 Attorneys for Opposer This <u>15th</u> day of January, 2007.

Matthew T. Vanden Bosch

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTUITIVE SURGICAL, INC.,

٧.

Opposer,

Opposition No. 91175319

Serial No. 78/728,,786

Published: December 19, 2006

DAVINCI RADIOLOGY ASSOCIATES, P.L.,

Applicant.

# APPLICANT'S SUPPLEMENTAL RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

NOW COMES, Applicant, Davinci Radiology Associates, P.L. ("DRA"), by and through its attorney, Matthew T. Vanden Bosch, and for its supplemental response to Opposer's First Set of Interrogatories to Applicant, responds as follows:

#### **INTERROGATORY NO. 3:**

Identify and describe all goods and services on which you use, have used or intend to use Applicant's Mark.

By means of that certain Exclusive License Agreement, by and between Applicant and Medical Specialists of the Palm Beaches, Inc., a Florida corporation ("MSPB"), dated August 1, 2005 (the "Agreement"), Applicant licensed MSPB to use exclusively Applicant's Mark in connection with MSPB's diagnostic imaging services. A copy of the Agreement is attached hereto. MSPB consists of consisting of 50+ physicians licensed to practice medicine in the State of Florida. MSPB conducts its diagnostic imaging services only within Palm Beach County, Florida. "Diagnostic imaging services" are nonsurgical, noninterventional

imaging services; and, in this case, consist of Magnetic Resonance Imaging (MRI);

Computed Tomography (CT); Positron Emission Tomography (PET) Scans; and, Digital

Mammography. These services are performed under the care or supervision of a boardcertified diagnostic imaging specialist.

#### **INTERROGATORY NO. 5:**

For the goods and services identified in your response to Interrogatory No. 3 of these Interrogatories, describe the manner in which said goods and/or services are marketed or will be marketed.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Other than the davinci-imaging.com website, some signs around 101 JFK Drive, Atlantis, Florida, 33462 (the "building"), old brochures in the building, business cards which are rarely used, and two carpets, one at the entrance and one in the elevator of the building, MSPB does not market its diagnostic imaging services with Applicant's trademark. Upon further information and belief, MSPB is removing any reference to DaVinci Diagnostic Imaging and its trademarks from its diagnostic imaging services business.

#### **INTERROGATORY NO. 6:**

State the date(s) upon which you began to use Applicant's Mark on or in connection with the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above. Upon information and belief, Applicant's Mark was first used in commerce on August 1, 2005.

INTERROGATORY NO. 8:

Describe each study, search and investigation that is being or has been conducted or

obtained by you or on your behalf regarding the trademark availability of Applicant's Mark by setting forth the date(s) on which the study, search or investigation was conducted, the identity of the person(s) who conducted the study, search or investigation, the method by which the study, search or investigation was conducted, and the results of the study, search or investigation.

On November 12, 2003, Kirk Friedland, attorney at law, conducted an initial Federal trademark search for both "DaVinci" and "Da Vinci" through the Trademark Electronic Search System (Tess).

#### **INTERROGATORY NO. 11:**

Describe the promotion of the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant objects to the term "promotion of services" as vague and ambiguous. In an attempt to respond to this interrogatory further, Applicant states that other than the davinci-imaging.com website, some signs around the building, old brochures in the building, business cards which are rarely used, and two carpets, one at the entrance and one in the elevator of the building, MSPB does not promote its diagnostic services with Applicant's trademark. Upon further information and belief, MSPB is presently removing any reference to DaVinci Diagnostic Imaging and its trademarks from its diagnostic imaging services business.

## **INTERROGATORY NO. 13:**

Describe the channels of trade through which the goods and/or services identified in your response to Interrogatory No. 3 of these Interrogatories move or will move to reach the end-users

of said goods and/or services.

Applicant incorporates herein by reference its answer to Interrogatory No. 3, above.

Applicant objects to the term "channels of trade" as vague and ambiguous. In an attempt to

respond to this interrogatory further, Applicant states that other than the davinci-

imaging.com website, some signs around the building, old brochures in the building,

business cards which are rarely used, and two carpets, one at the entrance and one in the

elevator of the building, MSPB does not move Applicant's trademark through any channels

of trade. Upon further information and belief, MSPB is removing any reference to DaVinci

Diagnostic Imaging and its trademarks from its diagnostic imaging services business.

**INTERROGATORY NO. 15:** 

Describe the circumstances under which Applicant first became aware of Opposer's

Marks, including but not limited to stating the date(s) upon which Applicant first became aware

of Opposer's Marks, identifying the person or persons at Applicant who first became aware of

Opposer's Marks, and stating the manner in which Applicant first became aware of Opposer's

Marks.

On or about November 13, 2003, Kirk Friedland, attorney at law, and former

counsel to Applicant, conducted an initial Federal trademark search through TESS for both

"DaVinci" and "Da Vinci" and found Opposer's Marks.

I swear or affirm that the above statements are true to the best of my information and belief.

Dated: March 5, 2008

Thomas P. Boyle, Authorized Member

DaVinci Radiology Associates, P.L.

Respectfully submitted,

Dated: March **5**, 2008

Matthew T. Vanden Bosch

Attorney at Law

301 Clematis Avenue

**Suite 3000** 

West Palm Beach, FL 33401

(561) 736-4696

#### **CERTIFICATE OF SERVICE**

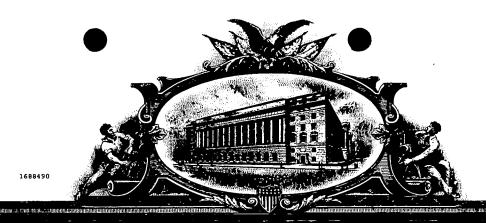
I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO

#### OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served on

Opposer Intuitive Surgical, Inc., by First Class U.S. Mail, postage prepaid, to:

Michelle J. Hirth, Esq.
Sheppard, Mullin, Richter & Hampton, LLP
Embarcadero Four, 17th Floor
San Francisco, California 94111
Attorneys for Opposer
This day of March, 2008.

Matthew T. Vanden Bosch



## THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

March 05, 2008

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,628,871 IS CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM October 01, 2002 SAID RECORDS SHOW TITLE TO BE IN: Registrant

By Authority of the

**Under Secretary of Commerce for Intellectual Property** and Director of the United States Patent and Trademark Office





Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

Reg. No. 2,628,871

United States Patent and Trademark Office

Registered Oct. 1, 2002

## TRADEMARK PRINCIPAL REGISTER

#### DA VINCI

INTUITIVE SURGICAL, INC. (DELAWARE COR-PORATION) 1340 WEST MIDDLEFIELD ROAD MOUNTAIN VIEW, CA 94043

FOR: COMPUTERIZED SURGICAL MANIPULA-TION SYSTEM COMPRISED OF SURGEON'S CON-SOLE, MASTER CONTROL, IMMERSIVE VIDEO DISPLAY, CAMERA IMAGE PROCESSING EQUIP-MENT, SURGICAL MANIPULATION SYSTEM SOFTWARE AND INSTRUCTIONAL MANUALS PROVIDED AS A UNIT, PATIENT-SIDE CART WITH SET-UP ARMS AND MANIPULATOR SLAVE ARMS, STERILE ADAPTORS TO CONNECT ARMS TO INSTRUMENTS, AND A FULL LINE OF RESPO-SABLE, IN OTHER WORDS, LIMITED RE-USE TOOLS, NAMELY, LAPAROSCOPES, ENDO-SCOPES, TROCARS, CANNULAS, CUTTERS, CLAMPS, ELEVATORS, GOUGES, KNIVES, SCOPE PREHEATERS, LIGHT SOURCES, CABLES AND COMPONENT PARTS, ELECTROSURGICAL IN-STRUMENTS, ELECTROCAUTERY INSTRU-MENTS, LASER INSTRUMENTS, ULTRASOUND INSTRUMENTS, LENS CLEANING, SCRUB AND BIOPSY BRUSHES, CLIP APPLIERS AND CLIPS, TACK APPLIERS AND TACKS, APPLICATORS, LIGATURE CARRIERS, NEEDLE HOLDERS, CLAMPS, HEMOSTATS, GRASPERS, CURETTES. INSTRUMENT GUIDES, LIGATURE PASSING AND KNOTTING INSTRUMENTS, NEEDLE, RE-TRACTORS, SNARES, STYLETS, FORCEPS, DIS-SECTORS, CALIPERS, SCISSORS, SUCTION AND IRRIGATION PROBES, STERILE DRAPES, HEMO-STATS, AMPUTATION HOOKS, OSTETOMES, SAWS, RETAINERS, SUTURING APPARATUS, MEASURING TAPES, CHISELS AND CONTRAC-TORS, FILES, SKIN GRAFT EXPANDERS, LAN-CETS, MALLETS, PLIERS, HAMMERS, RASPS, SPATULAS, AND STRIPPERS; A FULL LINE OF FDA CLASSES I AND II EXEMPT SURGICAL INSTRUMENTS, NAMELY, SCALPELS, SCALPEL BLADES AND HANDLES, STAPLERS, TACKERS, CLIP APPLIERS, ELECTROCAUTERY TOOLS FOR-CEPS, NEEDLE HOLDERS, GUIDES AND DRI-VERS, GRASPERS, AND KITENERS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-7-2000; IN COMMERCE 7-7-2000.

SN 75-982,190, FILED 3-19-1999.

VERNA BETH RIRIE, EXAMINING ATTORNEY



## THE UNIVER STATES OF AMERICA

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

March 05, 2008

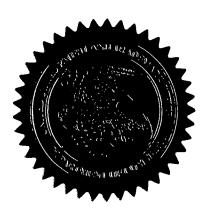
THE ATTACHED U.S. TRADEMARK REGISTRATION 2,628,871 IS CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM October 01, 2002 SAID RECORDS SHOW TITLE TO BE IN: Registrant

By Authority of the

**Under Secretary of Commerce for Intellectual Property** and Director of the United States Patent and Trademark Office





Int. Cl.: 10

Prior U.S. Cls.: 26, 39, and 44

Reg. No. 2,628,871

United States Patent and Trademark Office

Registered Oct. 1, 2002

# TRADEMARK PRINCIPAL REGISTER

#### DA VINCI

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FOR: COMPUTERIZED SURGICAL MANIPULA-TION SYSTEM COMPRISED OF SURGEON'S CON-SOLE, MASTER CONTROL, IMMERSIVE VIDEO DISPLAY, CAMERA IMAGE PROCESSING EQUIP-MENT, SURGICAL MANIPULATION SYSTEM SOFTWARE AND INSTRUCTIONAL MANUALS PROVIDED AS A UNIT, PATIENT-SIDE CART WITH SET-UP ARMS AND MANIPULATOR SLAVE ARMS, STERILE ADAPTORS TO CONNECT ARMS TO INSTRUMENTS, AND A FULL LINE OF RESPO-SABLE, IN OTHER WORDS, LIMITED RE-USE TOOLS, NAMELY, LAPAROSCOPES, ENDO-SCOPES, TROCARS, CANNULAS, CUTTERS, CLAMPS, ELEVATORS, GOUGES, KNIVES, SCOPE PREHEATERS, LIGHT SOURCES, CABLES AND COMPONENT PARTS, ELECTROSURGICAL IN-STRUMENTS, ELECTROCAUTERY INSTRU-MENTS, LASER INSTRUMENTS, ULTRASOUND INSTRUMENTS, LENS CLEANING, SCRUB AND BIOPSY BRUSHES, CLIP APPLIERS AND CLIPS, TACK APPLIERS AND TACKS, APPLICATORS, LIGATURE CARRIERS, NEEDLE HOLDERS, CLAMPS, HEMOSTATS, GRASPERS, CURETTES, INSTRUMENT GUIDES, LIGATURE PASSING AND KNOTTING INSTRUMENTS, NEEDLE, RE-TRACTORS, SNARES, STYLETS, FORCEPS, DISSECTORS, CALIPERS, SCISSORS, SUCTION AND IRRIGATION PROBES, STERILE DRAPES, HEMO-STATS, AMPUTATION HOOKS, OSTETOMES, SAWS, RETAINERS, SUTURING APPARATUS, MEASURING TAPES, CHISELS AND CONTRAC-TORS, FILES, SKIN GRAFT EXPANDERS, LAN-CETS, MALLETS, PLIERS, HAMMERS, RASPS, SPATULAS, AND STRIPPERS; A FULL LINE OF FDA CLASSES I AND II EXEMPT SURGICAL INSTRUMENTS, NAMELY, SCALPELS, SCALPEL BLADES AND HANDLES, STAPLERS, TACKERS, CLIP APPLIERS, ELECTROCAUTERY TOOLS FOR-CEPS, NEEDLE HOLDERS, GUIDES AND DRI-VERS, GRASPERS, AND KITENERS, IN CLASS 10 (U.S. CLS. 26, 39 AND 44).

FIRST USE 7-7-2000; IN COMMERCE 7-7-2000.

SN 75-982,190, FILED 3-19-1999.

VERNA BETH RIRIE, EXAMINING ATTORNEY



17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4106 415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

415-774-2953

September 6, 2006

Our File Number: 038T-126360

#### VIA EXPRESS MAIL LABEL NO. ER207652885US

Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451

Re:

New U.S. Intent-to-Use Trademark Application for the Mark

DA VINCI S HD SURGICAL SYSTEM (Stylized)

In Class:

10

Serial No.:

Not Yet Assigned

Filing Date:

Herewith

On Behalf Of:

Intuitive Surgical, Inc.

Our Ref. No.:

038T-126360

Dear Sir:

Enclosed for filing with the Patent and Trademark Office is an application for the mark DA VINCI S HD SURGICAL SYSTEM (Stylized) based upon an Intent-To-Use on behalf of Intuitive Surgical, Inc..

Please charge the filing fee of \$375.00 as well as any additional fees or charges to our **Deposit Account Number 501395**, citing Reference Number <u>038T-126360</u>.

Very truly yours,

Michelle D. Kahn

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Enclosures w02-WEST:FKM\400072724.1

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE TRADEMARK EXAMINING OPERATION

In the Application of:

For the Mark:

Intuitive Surgical, Inc.

DA VINCI S HD SURGICAL SYSTEM

(Stylized)

Serial No.:

**NOT YET ASSIGNED** 

Filing Date: HEREWITH

In Class:

10

## TRADEMARK APPLICATION PURSUANT TO §1(b) OF TRADEMARK ACT, AS AMENDED

Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451

Sir:

Applicant, Intuitive Surgical, Inc., is a Delaware corporation having a principal place of business 950 Kifer Road, Sunnyvale, California 94086.

Applicant requests registration of the above-identified mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et. seq., as amended) for:

> (Class 10)- Computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders,

clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers; surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners.

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above-identified goods. (15 U.S.C. §1051 et. seq., as amended). Applicant intends to use the mark on the goods, labels affixed to the goods and packaging for the goods. The mark is presented in standard characters without claim to any particular color. Applicant is the owner of Registration No. 2,628,871 for the mark DA VINCI.



The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

INTUITIVE SURGICAL, INC.

| Dated: 91106 | By: // 15 |
|--------------|-----------|
| Datoa.       | ~ J       |

John F. Runkel, Jr.

Senior VP & General Counsel

## **POWER OF ATTORNEY**

Applicant hereby appoints SHEPPARD, MULLIN, RICHTER & HAMPTON LLP, a firm including Michelle D. Kahn and Michelle Hirth, members of the State Bar of California, with full power of substitution and revocation, to prosecute this application, to make alterations and amendments thereto, to receive the Certificate of Registration and to transact all business in the United States Patent and Trademark Office connected therewith.

Please direct all communications to:

Michelle D. Kahn Sheppard, Mullin, Richter & Hampton LLP Four Embarcadero Center Seventeenth Floor San Francisco, CA 94111-4106 (415) 434-9100

Signed this 157 day of Stremson, 2006, at Sunnyvale, CA.

Senior VP & General Counsel INTUITIVE SURGICAL, INC.

INTUITIVE SURGICAL, INC. 950 Kifer Road Sunnyvale, CA 94086

International Class:

10

Goods:

Computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers; surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners.



## **CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10**

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail" postage prepaid in an envelope addressed to: Commissioner of Trademarks, U.S. Patent and Trademark Office, 2900 Crystal Drive, Arlington, Virginia 22202-3514 on \_\_September 6, 2006

Signature

Jeanne Brush Chernila

Name

September 6, 2006

Date

"Express Mail" Mailing Label Number:

ER207652885US

Transmittal Letter (1 pg); New Intent-to-Use Trademark Application With Declaration and Power of Attorney (4 pgs); Drawing Sheet (1 total); Return Postcard.

New U.S. Trademark Application for the Mark DA VINCI S HD SURGICAL SYSTEM (Stylized)

In Class:

10

Serial No.:

Not Yet Assigned

Filing Date:

Herewith

On Behalf Of: Intuitive Surgical, Inc.

Our Ref. No.: 038T-126360

ER207652885US TRADEMARK ATTORNEY DOCKET NO .: 038T-126360 The Patent and Trademark Office date stamp sets forth the receipt date (or both the receipt date and the Serial No.) of: Applicant, Registrant, Parties INTUITIVE SURGICAL, INC No. (Application, Registration, Cancellation, Opposition) No. Filing or Registration Date HEREWITH SYSTEM (STYLIZED Mark DA VINCIS HD SURGICAL IN CLASS: 10 ■ Trademark Application ITU □ Specimen Drawing ☐ Response ☐ Assignment ☐ Amendment to Allege Use ☐ Specimen ☐ Statement of Use ☐ Specimen Sec. 8 Decl. ☐ Sec. 15 Decl. □ Specimen ☐ Specimen ☐ Renewal Application □ Cancellation □ Opposition □ Request for Extension ☐ Check \$ Other TRAISMITTAN DSTCARN Atty/Sec. Initials



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ER207652885US TRADEMARK ATTORNEY DOCKET NO .: 038T-126360 The Patent and Trademark Office date stamp sets forth the receipt date (or both the receipt date and the Serial No.) of: Applicant, Registrant, Parties INTUITIVE SURGICAL, INC No. (Application, Registration, Cancellation, Opposition) NOT YET Filing or Registration Date HEREWITH Mark DA VINCI S HD SURGICAL SYSTEM (STY IN CLASS: 10 ■ Trademark Application TTU ☐ Specimen ■ Drawing □ Response ☐ Assignment ☐ Amendment to Allege Use ☐ Specimen ☐ Specimen ☐ Statement of Use 09-08-2006 Sec. 15 Decl. □ Specimen Sec. 8 Decl. U.S. Patent & TMOfc/TM Mail Rcpt Dt. # Renewal Application ☐ Specimen Opposition ☐ Cancellation ☐ Request for Extension ☐ Check \$ PG): EXPRESS MAIL (1 PG): RETURN Other TRANSMITTA Atty/Seg Initials

#

Sep 19, 2006

is acknowledges receipt on the FILING DATE of the application for registration for the mark identified below. The FILING DATE is contingent upon all nimum filing date requirements being met. Your application will be considered in the order in which it was received. Please review the status of it application every six months from the filing date of your application. You can check the status of your application on-line at <a href="http://tarr.uspto.gov/">http://tarr.uspto.gov/</a> by contacting the Trademark Assistance Center at 1-800-786-9199. Also, documents in the electronic file for pending applications can be viewed and wnloaded at <a href="http://www.uspto.gov/">http://www.uspto.gov/</a>.

MICHELLE D. KAHN
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
FOUR EMBARCADERO CENTER
SEVENTEENTH FLOOR
SAN FRANCISCO, CA 94111

ATTORNEY
REFERENCE NUMBER
038T-126360

## PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days. Such requests may be submitted by mail to:

COMMISSIONER FOR TRADEMARKS, P.O. BOX 1451, ALEXANDRIA, VIRGINIA 22313-1451; by fax to 571-273-9913; or by

e-mail to tmfiling.receipt@uspto.gov. The USPTO will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/665748
FILING DATE: Sep 8, 2006
REGISTER: Principal

MARK: DA VINCI S HD SURGICAL SYSTEM

MARK TYPE(S): Trademark

DRAWING TYPE: Words, letters, or numbers and design

FILING BASIS: Sect. 1(b) (Intent to Use)

ATTORNEY: Michelle D. Kahn

OWNER: Intuitive Surgical, Inc. (DELAWARE, Corporation)

950 Kifer Road

Sunnyvale, CALIFORNIA 94086

FOR: Computerized surgical manipulation system comprised of surgeon's console, master control, immersive video display, camera image processing equipment, surgical manipulation system software and instructional manuals provided as a unit, patient-side cart with set-up arms and manipulator slave arms, sterile adaptors to connect arms to instruments, and a full line of resposable, in other words, limited re-use tools, namely, laparoscopes, endoscopes, trocars, cannulas, cutters, clamps, elevators, gouges, knives, scope preheaters, light sources, cables and component parts, electrosurgical instruments, electrocautery instruments, laser instruments, ultrasound instruments, lens cleaning, scrub and biopsy brushes, clip appliers and clips, tack appliers and tacks, applicators, ligature carriers, needle holders, clamps, hemostats, graspers, curettes, instrument guides, ligature passing and knotting instruments, needles, retractors, snares, stylets, forceps, dissectors, calipers, scissors, suction and irrigation probes, sterile drapes, hemostats, amputation hooks, osteotomes, saws, retainers, suturing apparatus, measuring tapes, chisels and contractors, files, skin graft expanders, lancets, mallets, pliers, hammers, rasps, spatulas, and strippers; surgical instruments, namely, scalpels, scalpel blades and handles, staplers, tackers, clip appliers, electrocautery tools, forceps, needle holders, guides and drivers, graspers, and kiteners INT. CLASS: 010

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED





## OTHER DATA

OWNER OF U.S. REG. NOS.: 2628871

Design Search Codes:

26.13.21 - Quadrilaterals that are completely or partially shaded

#### LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the 1st day of August, 2005, by and between DaVinci Diagnostic Imaging, Inc., a Florida corporation ("Licensor"), and Medical Specialists of the Palm Beaches, Inc. a Florida corporation ("Licensee").

#### WITNESSETH:

WHEREAS, Licensor is the owner of the unregistered common law mark and name DaVinci Diagnostic Imaging (the "Licensed Mark") and the goodwill of the business associated therewith, if any;

WHEREAS, Licensor and Licensee are desirous of formalizing Licensee's use of the Licensed Mark as part of the name of a business engaged in by Licensee in the Territory (as defined below).

NOW, THEREFORE, in consideration of their mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

#### **SECTION 1. DEFINITIONS**

- 1.01. <u>Licensed Mark</u> means DaVinci Diagnostic Imaging and its logo as identified on <u>Exhibit A</u> hereto made a part hereof.
  - 1.02 <u>Licensed Services</u> means diagnostic imaging services and any related activities.
  - 1.03 Territory means the State of Florida.

#### **SECTION 2. GRANT OF LICENSE**

- 2.01. Grant. Licensor hereby grants to Licensee an assignable, non-revocable, exclusive right and license, with the right to sublicense, to use the Licensed Mark in the Territory in connection with the Licensed Services, including as a trade name or fictitious name, subject to the terms and conditions herein set forth. Licensor acknowledges that Licensee intends to file a fictitious name registration with the Secretary of State of the State of Florida to do business under the fictitious name "DaVinci Diagnostic Imaging", and Licensor hereby approves such registration and use.
- 2.02. Territorial Scope. Licensee may use the Licensed Mark only in connection with the Licensed Services, but at any location at which Licensee provides Licensed Services (the "Diagnostic Centers"), and in print, radio, television and any other form of advertising distributed in the Territory for those Diagnostic Centers' locations. Licensee and other persons and entities with Licensee's permission also may use the Licensed Mark on the Internet, including without limitation on any Internet website or other resource accessible through the Internet, and such use shall be deemed to be in the Territory and is permitted by this Agreement.

- 2.03. <u>Manner of Use</u>. Licensee shall use the Licensed Mark only in the form "DaVinci Diagnostic Imaging." The form of the Licensed Mark on all signs, advertising, documents, and any other uses of any description, shall be subject to the inspection and approval of Licensor in its reasonable discretion.
- 2.04. <u>Use by Licensor</u>. Licensor may continue to use the Licensed Mark only in its corporate name and on required governmental filings. Licensor shall not permit any third party or Licensor's affiliates or subsidiaries to use the Licensed Mark without the prior written consent of Licensee.

### **SECTION 3. STANDARDS; INSPECTION**

- 3.01 <u>Standards</u>. Licensee shall at all times be in compliance with all applicable federal, state and local laws, rules and regulations governing Licensee and the Licensed Services, and Licensee shall not in any way damage the goodwill and reputation of Licensor through the use of the Licensed Mark.
- 3.02 <u>Inspection</u>. Licensor shall have the right to inspect the Diagnostic Centers to ensure compliance with Sections 2.02 and 2.03 of this Agreement.

#### **SECTION 4. TERM; TERMINATION**

- 4.01. <u>Term.</u> The license herein granted shall commence on the date first above written, and shall continue until July 31, 2011, unless and until sooner terminated pursuant to the provisions of this Agreement. Unless terminated by Licensee on not less than ninety (90) days' notice prior to the end of the then current term, this license automatically shall renew for two (2) successive three (3) year terms.
- 4.02. Termination for Breach. If, in the reasonable judgment of a party, the other party has breached or is breaching any of the provisions of this Agreement, the non-breaching may give notice in writing to the breaching party of such breach. The notice shall identify the breach with particularity. In the event the breaching party fails to cure said breach within thirty (30) days from the date of said notice, the non-breaching party may terminate this Agreement immediately upon notice in writing to the breaching party.
- 4.03. <u>Bankruptcy</u>. In the event of Licensee's receivership or bankruptcy or insolvency, the license herein granted shall terminate automatically and immediately
- 4.04. <u>Termination in the Event of Termination of Lease</u>. Licensee, at its option, shall have the right to terminate this Agreement in the event of the termination of that certain DaVinci Diagnostic Facility Lease dated May 12, 2005 between Licensee and Medical Management of the Palm Beaches, Inc., an affiliate of Licensor.

### **SECTION 5. CONSIDERATION**

In consideration for the rights granted herein, Licensee shall pay to Licensor upon execution of this Agreement a one time fee in the amount of One Hundred Dollars.

#### SECTION 6. OWNERSHIP; USE OF LICENSED MARK

- 6.01. <u>Use</u>. Licensee agrees that it will make no use of the Licensed Mark except as permitted by this Agreement. Licensor agrees that it will make no use of the Licensed Mark except as permitted by this Agreement.
- 6.02. Ownership. Licensee acknowledges and agrees that nothing herein contained shall give to Licensee any right, title or interest in the Licensed Mark (except the limited right to use the Licensed Mark in accordance with the terms of this Agreement) and that the Licensed Mark is the sole and exclusive property of Licensor.
- 6.03. <u>Validity</u>. Licensee recognizes the distinctiveness, validity, originality, value, goodwill and sole ownership by Licensor of the Licensed Mark and agrees to neither raise nor cause to be raised any question concerning, or objections to, the validity of the Licensed Mark or any registration thereof or the right or title of Licensor thereto on any grounds whatsoever, and to not aid others so to do.

## SECTION 7. RIGHTS AND OBLIGATIONS ON TERMINATION OR EXPIRATION

Upon the cancellation, termination or expiration for any reason of the license herein granted, Licensee agrees to immediately discontinue and forever thereafter to desist from any and all use of the Licensed Mark.

#### SECTION 8. ADDITIONAL COVENANTS OF LICENSEE

- 8.01. Notice of Infringements. Licensee agrees to notify Licensor of any possible infringements, dilution, or adverse uses made known to Licensee of marks or names that may be confusingly similar to the Licensed Mark. Any action taken in response to such notice shall be at the sole and absolute discretion of Licensor, and at Licensor's sole expense. If Licensor declines to pursue any such infringement, dilution or adverse use, Licensee may do so at its own expense, but without any requirement to do so.
- 8.02. <u>Cooperation</u>. Licensee agrees at the request and expense of Licensor to cooperate, by execution of lawful documents, giving of testimony, making available records, and such other steps as Licensor or its attorneys may request, in such action as Licensor may deem appropriate, including without limitation seeking registration of the Licensed Mark and litigation to enforce rights in the Licensed Mark, under the circumstances for the protection of the Licensed Mark. Licensor similarly so agrees to cooperate with Licensee at Licensor's expense in any action taken by Licensee with respect to the Licensed Marks.
- 8.03. No Registration. Under no circumstances shall Licensee register or seek to register the Licensed Mark or any variation or portion thereof with any government agency, as a trademark or service mark; provided, however, Licensee shall be expressly permitted to file for the use of the Licensed Mark as a fictitious name as contemplated in Section 2.01 hereof. If Licensee violates this Section 8.03, in addition to its other remedies under this Agreement and applicable law, Licensor shall be entitled to receive an immediate assignment of any such registration at Licensee's cost and expense.

## SECTION 9. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

- 9.01. <u>Licensor's Representations and Warranties</u>. Licensor represents and warrants that it has the right, power and authority to enter into this Agreement and to perform its obligations hereunder.
- 9.02. <u>Licensee's Representations and Warranties</u>. Licensee represents and warrants that it has the right, power and authority to enter into this Agreement and to perform its obligations hereunder.
- 9.03. <u>Indemnification</u>. Licensor and Licensee shall mutually indemnify and hold harmless each other and each of the other's directors, officers, agents and employees, shareholders, partners, subsidiaries and affiliates and their respective directors, officers, agents and employees, from and against all claims, suits, and damages whatsoever, including but not limited to incidental costs, attorney's fees and damages, arising from or in connection with the breach or alleged breach by the other party of any term, covenant, representation or warranty under this Agreement or the use of the Licensed Mark by Licensee or Licensor, as the case may be; provided, however, that the indemnified party has the right to participate in any defense using counsel of its own choosing and at its own expense, and to approve any settlement offer made by or to the indemnifying party which may affect the indemnified party's rights or interests.
- 9.04. <u>Notice of Claims</u>. Licensee agrees to notify Licensor promptly of any actions, claims or demands brought or made against Licensee whose outcome may affect the rights of Licensor in any of the rights licensed under this Agreement.

#### SECTION 10. MISCELLANEOUS

- 10.01. Entire Agreement. This Agreement is the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, arrangements, and understandings, whether oral or written, regarding the subject matter hereof. This Agreement may be amended only by a written instrument signed on behalf of the parties by their duly authorized representatives.
- 10.02. <u>Assignment</u>. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and assigns.
- 10.03. <u>Survival</u>. It is expressly understood and agreed that certain provisions of this Agreement, including but not limited to those set forth in Sections 6, 7, 8.02, 8.03, 9 and 10 hereof, shall survive the termination or cancellation of the license herein granted and shall remain in full force and effect.
- 10.04. <u>Jurisdiction and Venue</u>. This Agreement shall be construed under the laws of the State of Florida, without reference to principles of conflicts of laws. Should any of the parties to this Agreement deem it necessary to enforce its rights in a court of law, the parties hereby agree that the exclusive venue for all actions relating in any manner to this Agreement shall be the applicable federal or state court with jurisdiction over Palm Beach County, Florida. The parties irrevocably agree to the jurisdiction of said courts. The prevailing party in said litigation shall be

entitled to recovery of its attorneys' fees for the litigation and any appeal that may result and its reasonable costs and accounting fees.

- 10.05. No Waiver. Any delay or forbearance by any party in exercising any right hereunder shall not be deemed a waiver of that right.
- 10.06. <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 10.07. <u>Legal Advice</u>: Each of the parties to this Agreement had counsel or had the opportunity to obtain counsel of their choice to review and advise them as to their rights and duties under this Agreement.
- 10.08. No Inference Against Author: Each party to this Agreement has reviewed this Agreement and has had the opportunity to have their counsel do the same. Therefore, the normal rule of construction that any ambiguities in this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 10.09. Notices. All notices and other communications required or permitted hereunder must be in writing and, unless otherwise permitted in this Agreement, will be deemed to have been duly given when delivered in person or one business day after having been dispatched by a nationally recognized overnight courier service for next business day delivery to the appropriate party, in each case with all delivery and similar charges prepaid, at the address specified below:

If to any Licensor, to:

| Dav          | Vinci Diagnostic Imaging, Inc. |  |
|--------------|--------------------------------|--|
|              |                                |  |
| If to Licens | see, to:                       |  |

Medical Specialists of the Palm Beaches, Inc. 5700 Lake Worth Road Lake Worth, FL 33463

or to such other address or addresses as any such party may from time to time designate as to itself by like notice.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth below.

| DAVINCI DIAGNOSTIC IMAGING, INC. | MEDICAL SPECIALISTS OF THE PALM BEACHES, INC. |
|----------------------------------|---|
| By: Name: Title:                 | By:<br>Name:<br>Title:                        |

#### **EXHIBIT A**

**LOGO** 



### **EXCLUSIVE LICENSE AGREEMENT**

This Exclusive License Agreement ("Agreement") is entered into as of the 1st day of August, 2005, by and between DaVinci Radiology Associates, P.L., a Florida corporation ("Licensor"), and Medical Specialists of the Palm Beaches, Inc. a Florida corporation ("Licensee").

### WITNESSETH:

WHEREAS, Licensor is the owner of the unregistered common law mark and name DaVinci Diagnostic Imaging (the "Licensed Mark") and the goodwill of the business associated therewith, if any;

WHEREAS, Licensor and Licensee are desirous of formalizing Licensee's exclusive use of the Licensed Mark as part of the name of a business engaged in by Licensee in the Territory (as defined below).

NOW, THEREFORE, in consideration of their mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

## **SECTION 1. DEFINITIONS**

- 1.01. <u>Licensed Mark</u> means DaVinci Diagnostic Imaging and its logo as identified on Exhibit A hereto made a part hereof.
  - 1.02 <u>Licensed Services</u> means diagnostic imaging services and any related activities.
  - 1.03 Territory means the State of Florida.

## SECTION 2. GRANT OF LICENSE

- 2.01. Grant. Licensor hereby grants to Licensee an assignable, non-revocable, exclusive right and license, with the right to sublicense, to use the Licensed Mark in the Territory in connection with the Licensed Services, including as a trade name or fictitious name, subject to the terms and conditions herein set forth. Licensor acknowledges that Licensee intends to file a fictitious name registration with the Secretary of State of the State of Florida to do business under the fictitious name "DaVinci Diagnostic Imaging", and Licensor hereby approves such registration and use.
- 2.02. <u>Territorial Scope</u>. Licensee may use the Licensed Mark only in connection with the Licensed Services, but at any location at which Licensee provides Licensed Services (the "Diagnostic Centers"), and in print, radio, television and any other form of advertising distributed in the Territory for those Diagnostic Centers' locations.
- 2.02.01 <u>Internet</u>. Only Licensee and other persons and entities with Licensee's permission may use the Licensed Mark on the Internet, including without limitation on any Internet website or other resource accessible through the Internet, and such use shall be

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deemed to be in the Territory and is permitted by this Agreement. Furthermore, Licensor acknowledges and agrees that Licensee will register and own such website and all information, copyrights, patents, trademarks (other than the Licensed Mark) and trademarks that are or may be derivatives of the Licensed Mark and other intellectual property associated therewith. Notwithstanding any other provision of this Agreement, such use shall not be terminated by Licensor for any reason and such rights shall not be restricted in any way.

- 2.03. Manner of Use. Licensee shall use the Licensed Mark only in the form "DaVinci Diagnostic Imaging." The form of the Licensed Mark on all signs, advertising, documents, and any other uses of any description, shall be subject to the inspection and approval of Licensor in its reasonable discretion.
- 2.04. <u>Use by Licensor</u>. Licensor may continue to use the Licensed Mark only in its corporate name for required governmental filings and for no other purpose. Upon the mutual written agreement of Licensor and Licensee, Licensor may use the Licensed Mark.

## SECTION 3. STANDARDS; INSPECTION

- 3.01 <u>Standards</u>. Licensee shall at all times be in material compliance with all known and applicable federal, state and local laws, rules and regulations governing Licensee and the Licensed Services.
- 3.02 <u>Inspection</u>. Licensor shall have the right to inspect the Diagnostic Centers to ensure compliance with Sections 2.02 and 2.03 of this Agreement.

## SECTION 4. TERM; TERMINATION

- 4.01. Term. The license herein granted shall commence on the date first above written, and shall continue until June 30, 2011, unless and until sooner terminated pursuant to the provisions of this Agreement. Thereafter, unless terminated by Licensee on not less than ninety (90) days' notice prior to June 30, 2011 or any successor term, as the case may be, this Agreement automatically shall renew for so long as both of the agreements set forth in Section 4.04 are in effect.
- 4.02. <u>Termination for Breach</u>. If, in the reasonable judgment of a party, the other party has breached or is breaching any of the provisions of this Agreement, the non-breaching party may give notice in writing to the breaching party of such breach. The notice shall identify the breach with particularity. In the event the breaching party fails to cure said breach within thirty (30) days from the date of said notice, the non-breaching party may terminate this Agreement immediately upon notice in writing to the breaching party.
- 4.03. <u>Bankruptcy</u>. In the event of Licensee's receivership or bankruptcy or insolvency, the license herein granted shall terminate automatically and immediately.
- 4.04. <u>Termination in the Event of Termination of Lease and Reading Agreement</u>. This Agreement shall automatically terminate in the event of the expiration and non-renewal or earlier termination of that certain DaVinci Diagnostic Facility Lease effective July 1, 2005 between Licensee and Medical Management of the Palm Beaches, Inc. ("Lease"), an affiliate of Licensor.

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In addition, this Agreement shall automatically terminate in the event of the expiration and non-renewal or termination of that certain Medical Director and Professional Supervision and Reading Agreement between Licensee and DaVinci Radiology Associates, P.L., an affiliate of Licensor ("Reading Agreement") dated as of August 1, 2005. In the event of a sale of the real property subject to the Lease, Licensor shall require the purchaser of such real property to assume the Lease.

## SECTION 5. CONSIDERATION

In consideration for the rights granted herein, Licensee shall pay to Licensor upon execution of this Agreement a one time fee in the amount of One Hundred Dollars.

## SECTION 6. OWNERSHIP; USE OF LICENSED MARK

- 6.01. <u>Use</u>. Licensee agrees that it will make no use of the Licensed Mark except as permitted by this Agreement. Licensor agrees that it will make no use of the Licensed Mark except as permitted by this Agreement.
- 6.02. Ownership. Licensee acknowledges and agrees that nothing herein contained shall give to Licensee any right, title or interest in the Licensed Mark (except the limited right to use the Licensed Mark in accordance with the terms of this Agreement) and that the Licensed Mark is the sole and exclusive property of Licensor.
- 6.03. <u>Validity</u>. Licensee recognizes the distinctiveness, validity, originality, value, goodwill and sole ownership by Licensor of the Licensed Mark and agrees to neither raise nor cause to be raised any question concerning, or objections to, the validity of the Licensed Mark or any registration thereof or the right or title of Licensor thereto on any grounds whatsoever, and to not aid others so to do.
- 6.04 <u>Derivative Marks</u>. The parties understand and agree that the Licensee has the right to make and use trademarks that are or may be derivatives of the Licensed Mark, that Licensee shall own such marks and that Licensor shall neither raise nor cause to be raised any question concerning, or objections to the validity of such derivative marks.

# SECTION 7. RIGHTS AND OBLIGATIONS ON TERMINATION OR EXPIRATION

Upon the cancellation, termination or expiration for any reason of the license herein granted, Licensee, except with respect to the rights set out in section 2.02.1 above, agrees to immediately discontinue and forever thereafter to desist from any and all use of the Licensed Mark.

## SECTION 8. ADDITIONAL COVENANTS OF LICENSEE

8.01. Notice of Infringements. Licensee agrees to notify Licensor of any possible infringements, dilution, or adverse uses made known to Licensee of marks or names that may be confusingly similar to the Licensed Mark. Any action taken in response to such notice shall be at the sole and absolute discretion of Licensor, and at Licensor's sole expense. If Licensor declines

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to pursue any such infringement, dilution or adverse use, Licensee may do so at its own expense, but without any requirement to do so.

- 8.02. Cooperation. Licensee agrees at the request and expense of Licensor to cooperate, by execution of lawful documents, giving of testimony, making available records, and such other steps as Licensor or its attorneys may request, in such action as Licensor may deem appropriate, including without limitation seeking registration of the Licensed Mark and litigation to enforce rights in the Licensed Mark, under the circumstances for the protection of the Licensed Mark. Licensor similarly so agrees to cooperate with Licensee at Licensor's expense in any action taken by Licensee with respect to the Licensed Marks.
- 8.03. No Registration. Under no circumstances shall Licensee register or seek to register the Licensed Mark with any government agency, as a trademark or service mark; provided, however, Licensee shall be expressly permitted to file for the use of the Licensed Mark as a fictitious name as contemplated in Section 2.01 hereof. If Licensee violates this Section 8.03, in addition to its other remedies under this Agreement and applicable law, Licensor shall be entitled to receive an immediate assignment of any such registration at Licensee's cost and expense.

# SECTION 9. REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

- 9.01. <u>Licensor's Representations and Warranties</u>. Licensor represents and warrants that it has the right, power and authority to enter into this Agreement and to perform its obligations hereunder.
- 9.02. <u>Licensee's Representations and Warranties</u>. Licensee represents and warrants that it has the right, power and authority to enter into this Agreement and to perform its obligations hereunder.
- 9.03. <u>Indemnification</u>. Licensor and Licensee shall mutually indemnify and hold harmless each other and each of the other's directors, officers, agents and employees, shareholders, partners, subsidiaries and affiliates and their respective directors, officers, agents and employees, from and against all claims, suits, and damages whatsoever, including but not limited to incidental costs, attorney's fees and damages, arising from or in connection with the breach or alleged breach by the other party of any term, covenant, representation or warranty under this Agreement or the use of the Licensed Mark by Licensee or Licensor, as the case may be; provided, however, that the indemnified party has the right to participate in any defense using counsel of its own choosing and at its own expense, and to approve any settlement offer made by or to the indemnifying party which may affect the indemnified party's rights or interests.
- 9.04. Notice of Claims. Licensee agrees to notify Licensor promptly of any actions, claims or demands brought or made against Licensee whose outcome may affect the rights of Licensor in any of the rights licensed under this Agreement.

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### SECTION 10. MISCELLANEOUS

- 10.01. Entire Agreement. This Agreement is the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, arrangements, and understandings, whether oral or written, regarding the subject matter hereof. This Agreement may be amended only by a written instrument signed on behalf of the parties by their duly authorized representatives.
- 10.02. <u>Assignment</u>. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and assigns.
- 10.03. <u>Survival</u>. It is expressly understood and agreed that certain provisions of this Agreement, including but not limited to those set forth in Sections 6, 7, 8.02, 8.03, 9 and 10 hereof, shall survive the termination or cancellation of the license herein granted and shall remain in full force and effect.
- 10.04. <u>Jurisdiction and Venue</u>. This Agreement shall be construed under the laws of the State of Florida, without reference to principles of conflicts of laws. Should any of the parties to this Agreement deem it necessary to enforce its rights in a court of law, the parties hereby agree that the exclusive venue for all actions relating in any manner to this Agreement shall be the applicable federal or state court with jurisdiction over Palm Beach County, Florida. The parties irrevocably agree to the jurisdiction of said courts. The prevailing party in said litigation shall be entitled to recovery of its attorneys' fees for the litigation and any appeal that may result and its reasonable costs and accounting fees.
- 10.05. No Waiver. Any delay or forbearance by any party in exercising any right hereunder shall not be deemed a waiver of that right.
- 10.06. <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
- 10.07. <u>Legal Advice</u>: Each of the parties to this Agreement had counsel or had the opportunity to obtain counsel of their choice to review and advise them as to their rights and duties under this Agreement.
- 10.08. No Inference Against Author: Each party to this Agreement has reviewed this Agreement and has had the opportunity to have their counsel do the same. Therefore, the normal rule of construction that any ambiguities in this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
- 10.09. Notices. All notices and other communications required or permitted hereunder must be in writing and, unless otherwise permitted in this Agreement, will be deemed to have been duly given when delivered in person or one business day after having been dispatched by a nationally recognized overnight courier service for next business day delivery to the appropriate party, in each case with all delivery and similar charges prepaid, at the address specified below:

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| If to any Licensor, to:  |   |
|--|---|
| DaVinci Radiology Associates, P.   | L.  |
|  |   |
| If to Licensee, to:  |   |
| Medical Specialists of the Palm Be 5700 Lake Worth Road Lake Worth, FL 33463   | eaches, Inc.                                  |
| or to such other address or addresses as any such party may from time to time designate as to itself by like notice. |   |
| IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth below.             |   |
| DAVINCI RADIOLOGY ASSOCIATES, P.L.   | MEDICAL SPECIALISTS OF THE PALM BEACHES, INC. |
| Name: Hand Dorth D) Title: Panalis Nenden  | By: The Filled  Name: FASRCKI  Title: CFD     |

MP/for

### EXHIBIT A LOGO

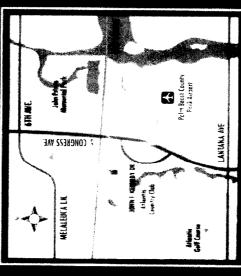


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- Combination of PET and CT is much more effective than either test alone
- Determines and locates cancer in only one test
- Effective for most types of cancers
- Particularly effective for pinpointing head and neck cancers
- Virtually eliminates the need for additional testing
- Getting answers sooner gives tumors less time to grow
- Aids doctors in determining the proper course of treatment
- Helps guide surgeons to the exact location of the cancer

### AVINCI DIAGNOSTIC MAGING

# PET/CT Fusion



561-207-2150

WWW DAVINCHIMAGING LOW



561-207-2150

WW.DAVINCI-IMAGING.COM

## A Renaissance in Care

Becuty meets technology at the sterre-of metart. DaVinci Diagnostic Imaging Center. Once you step into our magnificently designed building, you will know that we are not your ordinary imaging center. Hailed as one of the "jewels" of Palm Beach County architecture, the DaVinci Diagnostic Imaging Center houses world-class technology in an atmosphere of unsurpassed comfort and caring.

## What is PET/CT Fusion?

A PET (Positron Emission Tomography) scan alone is a powerful tool for detecting several types of cancer. In a PET scan, the patient is injected with a small amount of safe, radioactive sugar. PET can then tell the difference between normal and cancerous tissue through measuring how quickly the tissue converts this sugar to energy. A CT (Computed Tomography) scan produces highly detailed images of the inside of the body, providing anatomical information such as size, shape and location.

With the new PET/CT Fusion at DaVinci Diagnostic Imaging, a computer system combines CT's ability to locate tumors with PET's ability to determine if those tumors are likely to be cancerous. This technology helps doctors make a more accurate diagnosis.





## Accurate Results Sooner

Before PET/CT Fusion, a radiologist might have been unable to isolate exact tumor location, find the most active tumor section, or clearly determine tumor status with PET alone. It was also difficult to determine whether spots found by CT alone were cause for concern. When these situations happened, the patient had to undergo further testing including ultrasound, magnetic resonance imaging (MRI), biopsy or additional PET. PET/CT Fusion eliminates the need for additional testing, making the process shorter and allowing for a more precise and rapid diagnosis.

Although it may be possible to attempt fusion of CT and PET images obtained at different times, the position of the patient is rarely the same in both studies, leaving significant room for error. Additionally, changes in tumor size may occur in the time between scans. DaVinci Diagnostic Imaging combines the strengths of both technologies into one set of images allowing docrors to quickly determine the most accurate course of treatment, before the cancer has the opportunity to spread.

# Ensuring the Best Treatment for You

Patients planning for cancer therapy can benefit the most from this new technology. PET/CT images can be used to guide a surgeon to the exact location of a malignancy and help the oncologist better localize treatment and follow response. PET/CT





images also allow accurate localization of areas to be treated with radiation therapy. PET/CI Fusio works on most types of cancers and is particularly effective in pinpointing head and neck cancers, a difficult procedure due to the many small structure that require evaluation.

## Committed to Excellence

Our passionate physician radiologists are the driving force behind DaVinci Diagnostic Imaging. The desire to provide only top-notch technology, expertise and service has set the bar high at DaVinci and we are proud to offer our patients nothing but the best. Medical Director Thomas P Boyle M.D. consults with our staff of physicians and technologists trained at highly accredited institutions including Cornell, Columbia, Sloan Kettering Memorial Cancer Center and The Hospital for Special Surgery. Boasting over 50 years of experience serving Palm Beach County, or radiologists are not only skilled in their field, but are committed to enhancing the medical care with our community.

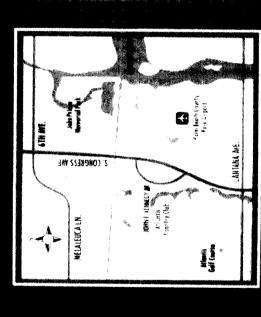
Early detection and proper treatment for cancer can sometimes mean the difference between life and death. Let the PET/CT Fusion technology at DaVinci Diagnostic Imaging give your doctor the edge in the fight against cancer.

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- Revolutionary technology
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### AVINC I D:AGNOSTIC MAGING

# High Field MRI

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## Magnetic Resonance Imagina

MRI is the advanced imaging technique that produces intricate images of both the human skeletal structure highly sophisticated images, MRI is extremely useful and soft tissues. Due to its ability to generate these in accurately diagnosing medical conditions and disorders such as:

- Tumors
- Cancer
- Breast Cancer Archritis
- Brain Disease/Dementia
- Joint Disease
- Artherosclerosis (hardening of the arteries)
  - Organ Disease



# 

the new TIM (Total Imaging Matrix) in Technology. offer Siemens Avanto High-Field MRI magnet with MRI is a safe and 100% pain free procedure used to distinguish healthy human tissue from non healthy powerful advancement in MRI technology, offering The Avanto High-Field system is the newest, most rissues. DaVinci Diagnostic Imaging is proud to important benefits to both patients and doctors.

### Patient benefits include:

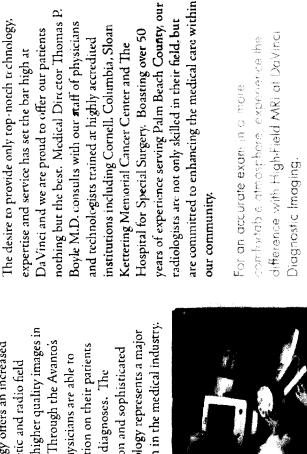
- Noise Cancellation Technology, which reduces up to 97% of the noise heard in traditional MRI machines
- Increased patient bed comfort, which decreases the need for significant repositioning and the resulting image errors
  - method which virtually eliminates any restless Feet-first exams for nearly all procedures, a frelings that may be associated with the MRI procedure

driving force behind DaVinci Diagnostic Imaging.

Our passionate physician radiologists are the

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technological breakthrough in the medical industry. combinations, resulting in higher quality images in imaging of TIM<sup>TM</sup> Technology represents a major a shorter amount of time. Through the Avanto's Avanto's TIM118 Technology offers an increased get better medical ir formation on their patients exceptionally high resolution and sophisticated advanced imaging rools, physicians are able to number of available magnetic and radio field and provide more accurate diagnoses. The



difference with High-Field MRI at DaVinci comfortable atmosphere, expenence the For an accurate exam in a more Diagnostic Imaging.

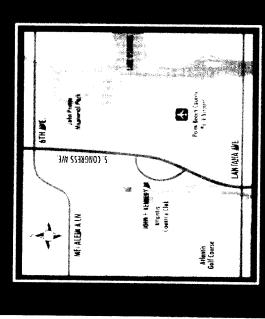
- Provides sharper, clearer images than film
- Computerized scan allows radiologist to manipulate image for better analysis of problem oreas
- Image is read by two sets of "eyes" - the radiologist and the computer
- Better imagery of dense breast tissue
- Detects up to 28% more breast cancers than film
- Less radiation
- Flexible plates mean less squeeze during the exam
- Quicker exam time
- Covered by most insurance
- Increased accuracy means fewer repeat visits

### AVINCI DIAGNOSTIC MAGING

### Digital Mammography

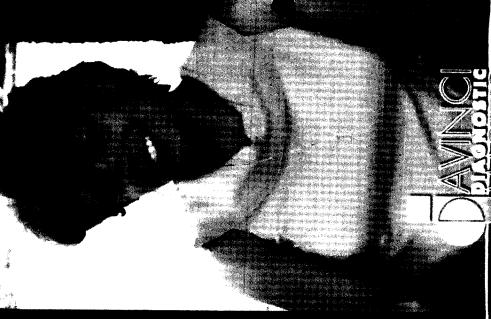
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The state of the s

### Stopping a Killer

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Every 15 seconds someone in the United States dies from heart disease. The number one killer of both men and women, heart disease causes more deaths each year than the next seven leading causes of death combined.

Hearr attacks occur when one of the small blood vessels of the heart becomes clogged. If you can detect a "clogged" vessel early, you can fix it before any damage is done. DaVinci Diagnostic Imaging is proud to be one of the few cente.'s in the nation to offer the 64-slice CT scanner, the newest rechnology in the fight against heart disease. The miraculous 3-D images created by the 64-slice CT scanner make it possible to diagnose coronary artery disease quicker and safer than ever before.









## The Non-Invasive Alternative

Until now, the standard for discovering heart blockages has been an irvasive procedure called a cardiac catheterization. During this procedure, a catherer is inserted into a blood vessel through an incision in the groin and snaked up to the heart where an opaque dye is injected. Any arterial blockage will then appear on an angiogram, an x-ray of the arteries. Cardiac catheterization takes anywhere from four to six hours, can be p.inful, carries the risk of serious complications and requires one to two days of recovery.

Conversely, the 64-slice CT scan at DaVinci Diagnostic Imaging is a non-invasive procedure that can be completed in 8 heartheats, with results available in just hours. During the exam, patients lie comfortably on a table that moves them back and forth through the opening of the examination unit. The 64-slice CT scanner then rapidly captures images of the heart and coronary arteries at rest, between heartbeats. The advanced speed and technology of the 64-slice CT scanner shortens the total scan time to just 15 to 30 seconds.

## Preventing Heart Attacks

The warning signs of heart disease can be difficult to detect. Many people of all ages suffer heart attacks without ever knowing they were at risk. Although heart disease is non-discriminating, some people are better candidates than others for a 64-slice CT scan.

You should strongly consider having a 64-slice CT scan if you have any of the following factors:

- \* You have close blood relatives who had heart disease or a heart attack at an early age, but you haven't had any heart problems yourself.
  - You are at high risk for heart disease due to diaberes, high cholesterol, high blood pressure, smoking, lack of exercise or unhealthy veight.
- You have received abnormal or unclear results on a stress test.
   Your concern over your possible heart disease is
  - Your concern over your possible heart disease is interfering with your day-to-day life.

## Committed to Excellence

At Da Vinci Diagnostic Imaging, we are proud to offer our patients nothing but the best. Medical Director Thomas P. Boyle M.D. consults with our staff of physicians and technologists trained at highly accredited institutions including Cornell, Columbia, Sloan Kettering Memorial Cancer Center and The Hospital for Special Surgery. Boasting over 50 years of experience serving Palm Beach County, our radiologists are not only skilled in their field, but are committed to enhancing the medical care within our community.

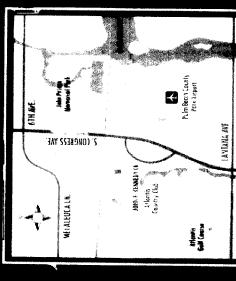
Anyone can benefit from knowing the actual health of his or her heart. Arm yourself with the life-saving knowledge provided by the 64-slice CT scanner at DaVinci Diagnostic Imaging.

# The Benefits of DaVinci's 64-slice CT scanner:

- About the procedure seasons are seasons no pole, no recovery and
- \* Linear Dear dra are betting
- A sites mayer with the team to site to see the team of the teams.
- France Profession to the control of the best section of the control of the best section of the control of the c
- \* Confer un grooks with results withdrafe, a libit fours.
- Frogrammy highly neralled in oges, allowing for a more precise diagnosis.

### AVINCI DIAGNOSTIC MAGING

### 64-Slice CT Scanning



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# A Renaissance in Care

ordinary imaging center. Hailed as one of the the DaVinci Diagnostic Imaging Center nouses Beauty meets technology at the state-of-the-orn building, you will know that we are not your "Jewels" of Palm Beach County architecture world-class technology in an atmosphere of DaVinci Diagnostic Imaging Center. Once you step into our magnificently designed unsurpassed comfort and caring.

## Digital Mammography

cancer, Digital Mammography provides sharper, The latest technology in the fight against breast potential abnormalities, resulting in the most accurate mammogram reading available and clearer images that can be enhanced by our radiologists to obtain a closer view of any greater peace of mind.

computer, the magnification, orientation, brightness offers accuracy unparalleled by its film predecessor. ability to analyze the mammogram s one reason Because Digital Mammograms are stored on a and contrast of the image may be altered after This computerized method of mammography more clearly see certain areas. This enhanced the exam is completed to help the radiologist why recent large studies show that Orgital





Mannnography system has the ability to "over-read" the mammogram and act as a second set of trained eyes, offering a second interpretation. This system, called CAD (Computer Assisted Detection) can cancers. Additionally, the computerized Digital itself be responsible for detecting 12-15% more Manimography detects up to 28% more breast breast cancers.

### More Comfort

a bit more bearable in a variety of ways. The flexible digital images, there is less need for repeat visits due eliminated the need for compression, it has made it squeeze. Additionally, due to immediate computer lost x-rays. Because Digital Mammograms require to over or under exposure of film or mislabeled or shorter processing time, the overall length of visit is significantly short r, allowing patients to get on slates are more for giving, providing slightly less sturage of images and the capability to correct Although Digital Mammography has not yet with their day.

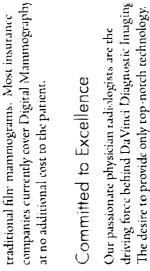
### A Better Solution

Studies have shown that women with dense breasts hide cancers. However, any woman cen have dense better for everyone. And every woman will benefit breasts or dense areas in her breasts, so digital is benefit from Digital Mammography because the traditional film for analyzing densities that may computerized, digital technique is superior to



Diagnostic Imaging your first line of defense Make Digital Mammography at DaVinci prevention and early detection are key. Until a cure for breast cancer is found,





from the lower dose of radiation as compared to





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The Medical Specialists of the Palm Beaches operates two state-of-the Diagnostics centers that provide you and your physician with one com source for diagnostics, medical testing and laboratory procedures.

**DaVinci Diagnostic Imaging Center** 

Hailed as one of the "jewels" of Palm Beach County architecture, the DaVinci Dia Center houses world-class technology in an atmosphere of unsurpassed comfort

Located in Atlantis next to JFK Medical Center, DaVinci Diagnostic Imaging Cent newest and most progressive imaging facility. The center is committed to providin advanced technology available today and is one of only three imaging center in t the revolutionary new 64 Slice CT Scan.

DaVinci Diagnostic Imaging Center offers a wide range of imaging services

- Digital Mammography
- MRI
- PET/CT Scan
- 64 Slice CT Scan

For more information on services at DaVinci Diagnostic Imaging, visit our new we

The Diagnostics Center

Medical Specialist of the Palm Beaches' second state-of-the-art facility, The Diag is equipped with the latest technology in medical imaging, patient therapy and reh nuclear medicine and laboratory science. The Diagnostics Center provides patien physicians with a wide range of common medical services in one convenient local

### Services available at The Diagnostics Center include:

- Bone Density Testing
- Cat Scan
- Ultrasound
- X-Ray
- Nuclear Stress Testing
- Physical Therapy
- Patient Rehabilitation
- Laboratory
- MUGU Scan

#### Location

The Diagnostics Center is located at: 5401 South Congress Avenue Atlantis, Florida

**Driving Directions:** 

From I-95: Exit I-95 at Lantana Road exit. Go west to Congress Avenue and turn The Diagnostics Center in ½ mile on the left (west) side.

From FL Tumpike: Exit FL Turnpike at Lake Worth Road exit. Go east approx. 5 miles to Congress A right (south) on Congress Avenue. The Diagnostics Center is 1.6 miles on the rig

Map & Directions





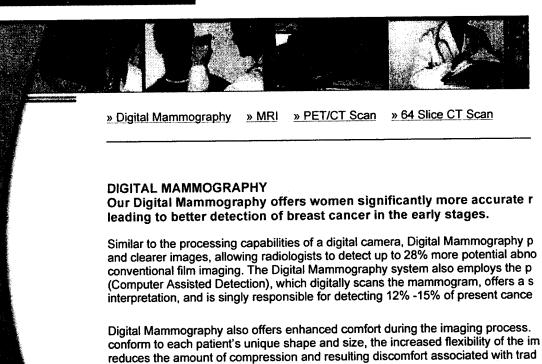
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With breast cancer continuing to be a growing concern for women of all ethnicitie Mammography is the best defense in the fight for early detection. Unfortunately t Digital Mammography unit is ten times that of traditional film units so most medic only offer less accurate film mammograms. At MSPB Diagnostic Imaging, we ma investment for you. Our patients receive all the benefits of Digital Mammogra additional cost to you!

Although every woman can get better screenings with Digital Mammography, pat experience the highest increase in accuracy over film include:

Women under the age of 50

mammography systems.

- · Women of any age with very dense or extremely dense breast tissue
- Pre- or peri-menopausal women of any age
- An estimated 212,920 new cases of invasive breast cancer are expected to occ women in the United States this year alone.

An estimated 40,970 women, or 1 in 5, will die from breast cancer. Early detectio defense in preventing potential abnormalities and eliminating existing breast canc health is vital to maintaining a long and healthy lifestyle. Maintain your health with Mammography at MSPB Diagnostic Imaging.





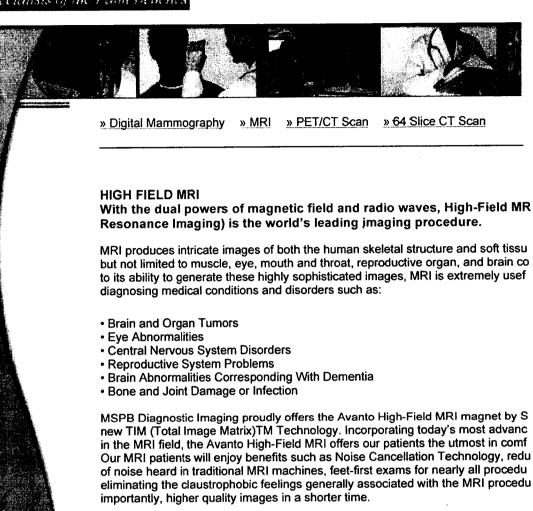
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For an accurate exam in a more comfortable atmosphere, experience the differen Field MRI at MSPB Diagnostic Imaging.





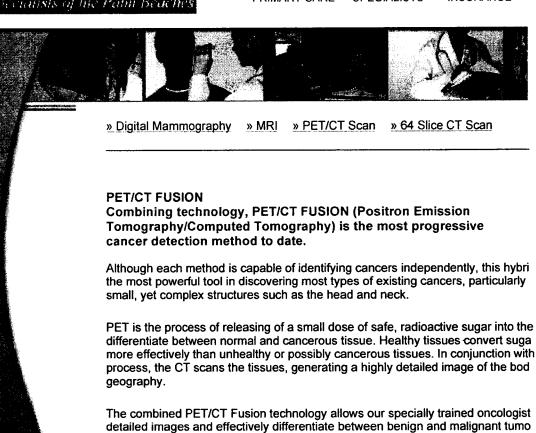
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Performed individually, both PET and CT often require supplementary testing to o accurate reading, significantly increasing the chance for imaging errors and discr differences in patient positioning. By combining both technologies into one system Fusion provides more precise and accurate information, allowing doctors to deter accurate course of treatment before any cancerous tumors have time to spread.

Get the facts you need for the most effective cancer treatment with advanced PE MSPB Diagnostic Imaging.

**Download Procedural Prep Sheet** 

pinpoint tumor size and location.



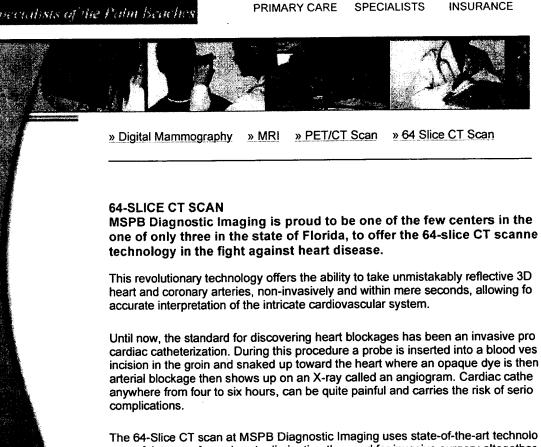


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powerful scans of your heart, eliminating the need for invasive surgery altogether CT scan takes images so quickly, it actually scans the between heartbeats while rest. The procedure can be completed in just eight heartbeats, with results availa hours.

During the exam, patients lie comfortably on a table that moves them back and fo opening of the examination unit. The 64-slice CT scanner then takes rapid image and the coronary arteries at work and while they are at rest between heartbeats. speed and technology of the 64-slice CT scanner shortens the total exam time to minutes.

The warning signs of heart disease can be difficult to detect. Many people of all a attacks without ever knowing they were at risk. Although heart disease is non-dis some people are better candidates than others for a 64-slice CT scan.

You should strongly consider having a 64-slice CT scan if you have any of the fo

- You have close blood relatives who had heart disease or a heart attack at an ea haven't had any heart problems yourself.
- You are at high risk for heart disease due to diabetes, high cholesterol, high blo smoking, lack of exercise or unhealthy weight.
- You have received abnormal or unclear results on a stress test.

The miraculous technology of the 64-Slice CT Scan makes it possible to diagnos artery disease quicker and safer than ever before. Early diagnosis of this serious to successful treatment, prevention of heart attacks and saving lives. Find out ab CT Scanner today. It may save your life.





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### Defining Image

Beauty meets technology at the state-of-the-art DaVinci Diagnostic Imaging Center. Once you step into our magnificently designed building, you will know that we are not your ordinary imaging center.

Hailed as one of the "jewels" of Palm Beach County architecture, the DaVinci Diagnostic Imaging Center houses world-class technology in an atmosphere of unsurpassed comfort and caring.

Located in Atlantis next to JFK Medical Center, DaVinci Imaging Center is the area's premiere imaging facility. DaVinci Imaging Center offers a wide range of imaging services including Digital Mammography, MRI, PET/CT Scan and the revolutionary new 64 Slice CT Scan, one of just three in the state.

Founded by a highly accredited team of physician radiologists, DaVinci Diagnostic Imaging is committed to providing excellence in patient care with today's most advanced technology in a warm, caring environment.











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Mission/Philosophy Meet The Doctors

### Mission/Philosophy

Our passionate physician radiologists are the driving force behind DaVinci Diagnostic Imaging. The desire to provide only top-notch technology, expertise and service has set the bar high at DaVinci and we are proud to offer our patients nothing but the best.

Our mission is to provide patients with the most advanced care possible in a comfortable, compassionate environment. Our investment in state-of-the-art imaging equipment ensures that you receive the finest medical care available using today's top technology.

As one of only three imaging centers in the state to offer 64 Slice CT Scans and as a leader in Digital Mammography, DaVinci Diagnostic Imaging Center is committed to advancing the science of imaging. Through this advancement, we are dedicated to providing superior medical imaging, ensuring more accurate diagnoses, preventing the spread of disease and saving lives.









High Field MRI 64-Slice CT Digital Mammography PET CT Fusion

### **Imaging Services**

#### High Field MRI

With the dual powers of magnetic field and radio waves, High-Field MRI (Magnetic Resonance Imaging) is the world's leading imaging procedure.

#### 64-Slice CT Scanner

We're proud to be one of the few centers in the nation, and one of only three in the state of Florida, to offer the 64-slice CT scanner, the newest technology in the fight against heart disease.

#### Digital Mammography

Our Digital Mammography offers women significantly more accurate results leading to better detection of breast cancer in the early stages.

#### **PET/CF Fusion**

Combining technology, PET/CT FUSION (Positron Emission Tomography/Computed Tomography) is the most progressive cancer detection method to date.





High Field MRI 64-Slice CT Digital Mammography PET CT Fusion

### High Field MRI

With the dual powers of magnetic field and radio waves, High-Field MRI (Magnetic Resonance Imaging) is the world's leading imaging procedure.

MRI produces intricate images of both the human skeletal structure and soft tissues, including but not limited to muscle, eye, mouth and throat, reproductive organ, and brain composition. Due to its ability to generate these highly sophisticated images, MRI is extremely useful in accurately diagnosing medical conditions and disorders such as:

- Brain and Organ Tumors
- Eye Abnormalities
- Central Nervous System Disorders
- Reproductive System Problems
- Brain Abnormalities Corresponding With Dementia
- Bone and Joint Damage or Infection

DaVinci Diagnostic Imaging proudly offers the Avanto High-Field MRI magnet by Siemens with the new TIM (Total Image Matrix)TM Technology. Incorporating today's most advanced technology in the MRI field, the Avanto High-Field MRI offers our patients the utmost in comfort and care. Our MRI patients will enjoy benefits such as Noise Cancellation Technology, reducing up to 97% of noise heard in traditional MRI machines, feet-first exams for nearly all procedures, virtually eliminating the claustrophobic feelings generally associated with the MRI procedure, and most importantly, higher quality images in a shorter time.

For an accurate exam in a more comfortable atmosphere, experience the difference with High-Field MRI at DaVinci Diagnostic Imaging.





High Field MRI 64-Slice CT Digital Mammography PET CT Fusion

### 64-Slice CT Scan

DaVinci Diagnostic Imaging is proud to be one of the few centers in the nation, and one of only three in the state of Florida, to offer the 64-slice CT scanner, the newest technology in the fight against heart disease.

This revolutionary technology offers the ability to take unmistakably reflective 3D images of the heart and coronary arteries, non-invasively and within mere seconds, allowing for the most accurate interpretation of the intricate cardiovascular system.

Until now, the standard for discovering heart blockages has been an invasive procedure called a cardiac catheterization. During this procedure a probe is inserted into a blood vessel through an incision in the groin and snaked up toward the heart where an opaque dye is then released. Any arterial blockage then shows up on an X-ray called an angiogram. Cardiac catheterization takes anywhere from four to six hours, can be quite painful and carries the risk of serious complications.

The 64-Slice CT scan at DaVinci Diagnostic Imaging uses state-ofthe-art technology to take powerful scans of your heart, eliminating the need for invasive surgery altogether. The 64-Slice CT scan takes images so quickly, it actually scans the between heartbeats while the heart is at rest. The procedure can be completed in just eight heartbeats, with results available in just hours.

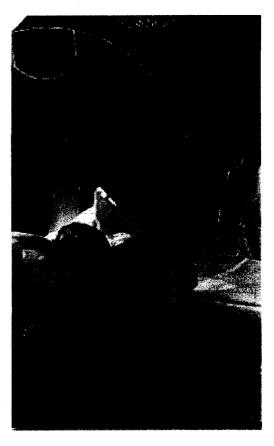
During the exam, patients lie comfortably on a table that moves them back and forth through the opening of the examination unit. The 64-slice CT scanner then takes rapid images of the heart and the coronary arteries at work and while they are at rest between heartbeats. The advanced speed and technology of the 64-slice CT scanner shortens the total exam time to just 15 to 30 minutes.

The warning signs of heart disease can be difficult to detect. Many people of all ages suffer heart attacks without ever knowing they were at risk. Although heart disease is non-discriminating, some people are better candidates than others for a 64-slice CT scan.

You should strongly consider having a 64-slice CT scan if you have any of the following factors:

- You have close blood relatives who had heart disease or a heart attack at an early age, but you haven't had any heart problems yourself.
- You are at high risk for heart disease due to diabetes, high cholesterol, high blood pressure, smoking, lack of exercise or unhealthy weight.
- You have received abnormal or unclear results on a stress test.

The miraculous technology of the 64-Slice CT Scan makes it



ever before. Early diagnosis of this serious disease is vital to successful treatment, prevention of heart attacks and saving lives. Find out about the 64-Slice CT Scanner today. It may save your life.



High Field MRI 64-Slice CT Digital Mammography PET CT Fusion

### Digital Mammography

Our Digital Mammography offers women significantly more accurate results leading to better detection of breast cancer in the early stages.

Similar to the processing capabilities of a digital camera, Digital Mammography provides cleaner and clearer images, allowing radiologists to detect up to 28% more potential abnormalities than conventional film imaging. The Digital Mammography system also employs the power of CAD (Computer Assisted Detection), which digitally scans the mammogram, offers a second interpretation, and is singly responsible for detecting 12% -15% of present cancers.

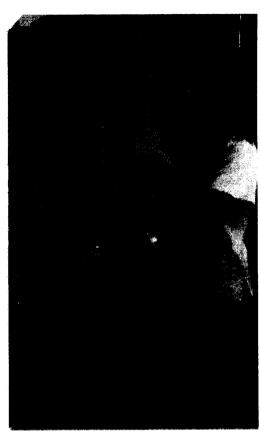
Digital Mammography also offers enhanced comfort during the imaging process. Structured to conform to each patient's unique shape and size, the increased flexibility of the imaging plates reduces the amount of compression and resulting discomfort associated with traditional mammography systems.

With breast cancer continuing to be a growing concern for women of all ethnicities, Digital Mammography is the best defense in the fight for early detection. Unfortunately the cost of a Digital Mammography unit is ten times that of traditional film units so most medical facilities still only offer less accurate film mammograms. At DaVinci Diagnostic Imaging, we made the investment for you. Our patients receive all the benefits of Digital Mammography at no additional cost to you!

Although every woman can get better screenings with Digital Mammography, patients that will experience the highest increase in accuracy over film include:

- Women under the age of 50
- Women of any age with very dense or extremely dense breast tissue
- Pre- or peri-menopausal women of any age

An estimated 212,920 new cases of invasive breast cancer are expected to occur among women in the United States this year alone. An estimated 40,970 women, or 1 in 5, will die from breast cancer. Early detection is the best defense in preventing potential abnormalities and eliminating existing breast cancers. Breast health is vital to maintaining a long and healthy lifestyle. Maintain your health with Digital Mammography at DaVinci Diagnostic Imaging.





High Field MRI 64-Slice CT Digital Mammography PET CT Fusion

### PET CT Fusion

Combining technology, PET/CT FUSION (Positron Emission Tomography/Computed Tomography) is the most progressive cancer detection method to date.

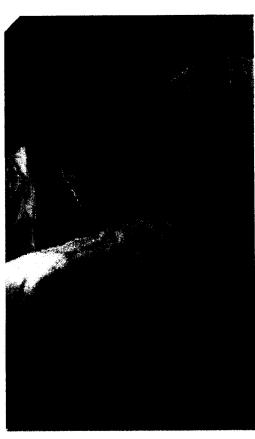
Although each method is capable of identifying cancers independently, this hybrid procedure is the most powerful tool in discovering most types of existing cancers, particularly those found in small, yet complex structures such as the head and neck.

PET is the process of releasing of a small dose of safe, radioactive sugar into the human body to differentiate between normal and cancerous tissue. Healthy tissues convert sugar into energy more effectively than unhealthy or possibly cancerous tissues. In conjunction with the PET process, the CT scans the tissues, generating a highly detailed image of the body's internal geography.

The combined PET/CT Fusion technology allows our specially trained oncologists to view highly detailed images and effectively differentiate between benign and malignant tumors as well as pinpoint tumor size and location.

Performed individually, both PET and CT often require supplementary testing to obtain an accurate reading, significantly increasing the chance for imaging errors and discrepancies due to differences in patient positioning. By combining both technologies into one system, PET/CT Fusion provides more precise and accurate information, allowing doctors to determine the most accurate course of treatment before any cancerous tumors have time to spread.

Get the facts you need for the most effective cancer treatment with advanced PET/CT Fusion at DaVinci Diagnostic Imaging.



### THE FOURTH ARM

**Enhancing the Art of Surgery** 

da Vincl

### THE FOURTH ARM

product number 380119

The da Vinci® Surgical System Fourth Arm is designed to provide a surgeon with increased control and dexterity as well as the ability to enable selfassistance by having access to a third instrument arm and instruments.



#### About Intuitive Surgical

Intuitive Surgical has established itself as the world's leader in operative surgical robotics. Through its development and commercialization of the da Vinci Surgical System, Intuitive Surgical is taking surcery beyond the limits of the human hand. As the market leader in operative surgical robotics. Intuitive is committed to creating technologies that may enable surgeons to perform minimally invasive surgery (MIS) in a manner never before experienced, and to reduce trauma, postoperative pain, and surgical complications for patients by operating with the flexibility of open surgery through tiny ports.

### Features and Benefits

Purchase of the Fourth Arm includes the following items:

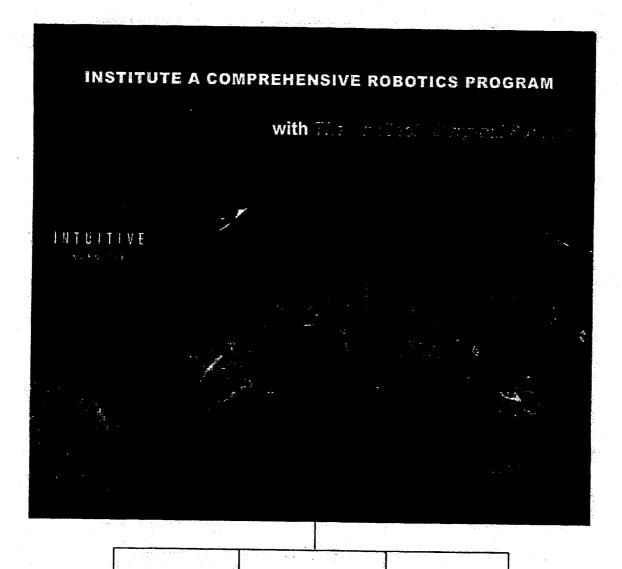
- · On-site installation of all necessary hardware, software and mechanics
- · Sterile adapter, cannula and cannula mount
- One year's service under the terms and conditions of your ourrent service agreement with Intuitive Surgical

INTUITIVE SURGICAL<sup>C</sup> Headquarters 950 Kifer Road Sunny vale, CA 94086 USA 1 888 868 4647 European Office 5, place Royale F-78100 Saint-Cerrain-en-Laye France 33.1 39.04 26.60

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SURGICAL



### **Technology**

- The Only Wristed Instruments with Seven Degrees of Freedom
- Immersive 3-D
   Visualization
- Upgradable Platform

### **Procedures**

- Thousands of Procedures Performed in:
   General Surgery
- General Surgery
  Pediatric Surgery
  Urologic Surgery
  Cardio-Thoracic Surgery
- FDA Cleared for Laparoscopic, Thoracoscopic and Intracardiac Surgery
- True Clinical Efficacy

### **Training**

- Proven Clinical Pathways
- Comprehensive Team Training
- Quality Clinical Support

### **Economics**

- Decreased Length of Stay
- Reduction in Complications
- Increased Patient Volume
- Positive Return on Investment

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Total Control

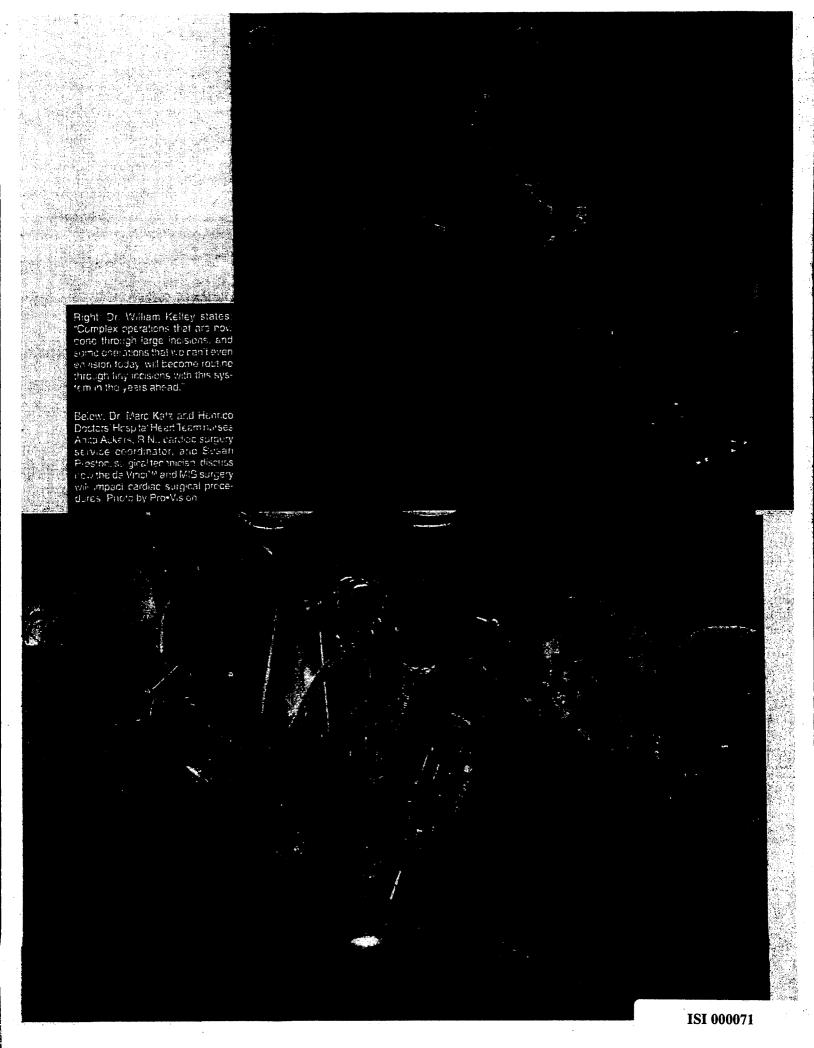
# M.D. NEWS

A BUSINESS AND LIFESTYLE MAGAZINE FOR PHYSICIANS

JULY 2000

Marc R. Katz, M.D.

Henrico Doctors' Hospital da Vinci™—The Next Generation of Minimally Invasive Surgery



# Henrico Doctors' Hospital da Vinci<sup>®</sup>—the Next Generation of Minimally Invasive Surgery

By Elizabeth Mathes

Phase II—the next generation—of equipment for minimally invasive surgery (MI5)," says Richard W. Graham, M.D., one of the Richmond-area physicians who will be among the first to use the da Vinci™ Surgical System to perform surgical procedures. The system, which was recently purchased by Henrico Doctors' Hospital, is the first to be located in Virginia. It is one of only six such systems in the United States and only 19 in the world.

"We think that this is potentially revolutionary technology," says Patrick Farrell, administrator of the hospital, explaining that the system provides a number of new features that dramatically improve the physician's ability to perform MIS surgery. At the same time, he adds, the da Vinci<sup>TM</sup> system makes it more physically comfortable for physicians to perform MIS procedures.

The da Vinci™ Surgical System, recently developed by Intuitive Surgical ™ a California firm, has two primary components: the surgeon's viewing and control console and a surgical arm unit which holds the endoscope for the system's camera and holds and manipulates the system's arm ports and arms, with their detachable surgical instruments.

The instruments are attached to a new mechanical feature, tiny electronically controlled wrists. Each has a standard surgical fip featuring tools such as a needle driver, scissors and dissectors. These wrists provide the physician, for the first time, with the ability to simulate natural hand movements inside the patient during MIS surgery.

Using the da Vinci<sup>TM</sup> Surgical System, the surgeon performs the procedures seated at the console; while viewing a high-resolution, three-dimensional image through a monitor in the top of the console. About two feet beneath the monitor, the surgeon's arms are in a natural, relaxed position and his or her thumbs and forefingers grasp

instrument handles that can be rotated, tilted, advanced or withdrawn.

Da Vinci<sup>TM</sup> came to the hospital's attention through William E. Kelley Jr., M.D., a general surgeon who has staff privileges at Henrico Doctors'. Kelley, who was a pioneer in MIS laparoscopic surgery, was contacted by Intuitive Surgical" marketing personnel at a trade show. "They told me they wanted me to see their latest piece of MIS equipment," he says. "I told them I wasn't interested in anything that didn't have wrists. They said. We've got wrists!"

Kelly was so impressed by da

Dr. Richard Graham explains to a patient the benofits of MIS with da Vinc., such as quicker recovery time, less pain and fewer medications, all of which help to deliver a higher standard of get enticare. Photo by Pre•Vision



"The big difference is in the wrists," says Dr. Wilram Kelley, Gurren Faulus eson, recorgen, does not offer surgeons the floxing right wind does. The electronically controlled in the give surgoons the ability to simulate natural transfer electrost to luth precise control with no district to, rangue or hand tremer. Photo by Pro-Malon

Vinoi<sup>TM</sup> that he and his colleague, Marc R. Katz, M.D., an Henrico Doctors' physician who is a cardiac surgeon, quickly traveled to Europe to see the equipment being used. Dr. Graham, who is a urological surgeon and also has staff privileges at the hospital, traveled to San Francisco to see da Vinci. The On their joint recommendation, the Henrico Doctors' Hospital Board of Directors and administration agreed to purchase the system.

Kelley, Graham and Katz are the first physicians who will be using Richmond's da Vinci<sup>TM</sup> for surgery. They report that the system features a number of significant technological breakthroughs.

"The new wrist mechanisms," says Graham, "allow the surgical instruments—your miniature hands—to get into places you couldn't get into before and do things you previously couldn't.

do." He notes that they give the surgeon the ability to reach around, beyond and behind delicate body structures. He points out, too, that the new wristed implements make it much easier to suture during MIS procedures. "Using the old MIS equipment was like using a hand prosthesis," he says. "Using da Vinci" is like using a hand."

The surgeons remark enthusiastically about the major improvements da Vinci<sup>TM</sup> brings to the
surgeon's ability to view the operative site. First of all, because
the video monitor is now viewed
through a port in the top of the
console, the surgeon now looks
down, toward his or her hands, to
see the operative site, as would
occur in open surgery.

Kelley emphasizes that da Vinci provides MIS surgeons with a three-dimensional video image, as opposed to the old twodimensional image. With the traditional two-dimensional image, the surgeon has to visualize the third dimension unaided that three doctors are very pleased and that the videounlase assets itself resolution and provides as cantly greater degree of manufaction than is available directly the average laparoscope.

Dr. Katz paints of the find the relativity to see clearly its chirace in a cal in his cardiac success see the area. We are working the similar area than those where each ageons usually operate and smaller vessels. To the success working on vessels at a row as 105 millions.

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From right to left

Da Vinci also allows six serius to operate with a great resident test degree of precision. The six estimate force feedback sensure in the right propriate receives the propriate receives a support of an ounce of the six and six of an ounce of the six and six of once necessary degrees.

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ment of the surgeon's hand can be franslated to a much smaller, finer movement. The scaling can be normal, one-to-one, or can be three-toone or five-to-one. Five-to-one is the finest scaling. A five-millimeter movement by the surgeon's hand will cause a one-millimeter movement by the surgical equipment."

Da Vinci, TM because of its precise motor mechanism, eliminates the motion artifact, or "hand tremor," that can occur because of the difficulty of manipulating the instruments in traditional MIS surgery or due to fatigue in lengthy open surgeries.

Visual access to the body's interior is greatly improved in the da Vinci™ system, as well. Both



Left Dr. Marc Katz sits at the heart of the da Vincitio surgical platform, the consolo, with its high-resolution, three-pimeris ( view of the surgical field. Photo by Pro•Vision

straight and angled endoscopes are available and the surgeon himself or herself can now reposition the camera during the operation. "This dramatically increases the surgeon's control over the operation. says Kelley: "In traditional laparoscopy; the surgeon tells a camera operator where to place the laparoscope and has to wait for the scope to be repositioned.

"Da Vinci" is like miniaturizing your self," says Katz. "It gives you all, or more, of the precision and fine technique you now have in open surgery." Kelley says. One of the greatest things about da Vincital is that the precision of the equipment automatically takes any surgeon to the next skill level.

Katz, especially, is excited about the impact of da Vinci<sup>TM</sup> on his specialty. area. "The da Vinci™ system is now providing cardiac surgeons with the first practical opportunity to perform MIS heart surgery," Katz says. "Until now, we couldn't see well enough or maneuver well enough to use MIS for heart procedures." Katz sees application of the daVinci<sup>TM</sup> system for heart bypass operations, valve replacement and repair and for the closing of septal defects. "We're hoping that, in the future, most open-heart surgery can be done through minimally invasive techniques, avoiding a division of the patient's breast bone."

At present, the U.S. Food and Drug Administration has approved the main components of the da Vinci<sup>TM</sup> Surgical System. It is anticipated that the final approval, for the instruments themselves, will be granted very soon. Initially, Henrico Doctors "Hospital surgeons will use the system for general surgical applications in the area of the diaphragm and below. This will be followed by applications in the cardiac area.

It is not surprising that Henrico Doctors' Hospital took the anitiative to purchase the da Vincing system. Staff physicians have been performing MIS surgery there since the late 1980s and many of the first MIS procedures in the state of Virginia were performed there.

"Our physicians are highly innovative; they like to be on the leading edge," says Hospital Administrator Farrell. "We like to respond to our doctors and offer them.opportunities like working with the da Vinci<sup>TM</sup> system." Farrell adds that the hospital is very committed to providing the community with state-of-the-art medical care.

Fairell and the surgeons emphasize that da Vinci<sup>TM</sup> is part of a mission—to train as many physicians as possible to use it and to afford qualified physicians the opportunity to use the system for MIS procedures. "This isn't just for us," says Fairell. "It's for the medical community and the greater Richmond community."

Kelley, Graham and Katz have been trained to use the system and will be teaching other physicians, including out-of-state surgeons, to use it. "I'm in the process of finalizing the curriculum with Intuitive



The three-dimensional surgical field above provides major improvements in the surgeon's ability is view the operative site, especially critical in cardiac surgery. Finger instrumentation below allows the physician to operate with an enhanced degree of precision. Photos courtesy of Intuitive Surgical Tri

Surgical mow, says Kelley. As more da Vinci moye systems are installed around the country, Kelley and other selected surgeons will visit their trainees sites as preceptors. It is anticipated that surgeons who complete the training program will earn continuing education credits.

Kelley believes that surgeons are just beginning to explore the potential of the da Vinci<sup>TM</sup> system. "The precision and flexibility of this type of computerized surgical system will allow us to do things we haven't even thought of yet," he says. He cites the po-

tential for long-distance surgery, a physician performing surgery or assisting another physician with surgery in another state or even another country.

Farrell and all three of the surgeons agree that MIS surgery will become the standard for most complicated surgical procedures in the not-too-distant future and that da Vinci<sup>TM</sup> will play a key role in getting it there.

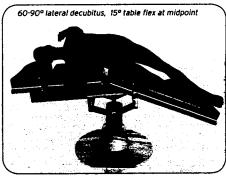
Henrico Doctors' Hospital 1602 Skipwith Road Richmond, Virginia 23229 Mark.White@HCAHealthcare.com

## Patient Positioning & Preparation

All steps performed before port placement

- Place endotracheal and nasogastric/orogastric tube
- 2. Insert Foley catheter
- 3. Position patient
- 4. Support arms with padding
- 5. Pad pressure points and secure position
- 6. Place lower body warmer
- 7. Shave and prep patient
- 8. Insufflate abdomen
- Mark iliac crest, costal margin and port sites

#### Lateral "Full" Flank Position

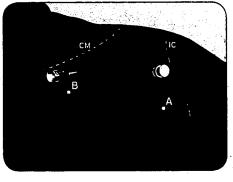


## Port Placement Option 1

## Medial Camera Port Placement - 30° Down or 0° Scope

- da Vinci Endoscope Port, 12mm (Blue): Place peri-umbilical camera port; may shift laterally beyond rectus muscle in obese patients
- Right da Vinci Instrument Port, 8mm (Yellow): Place port a hand breadth lateral to the camera port and at least 3cm from the iliac crest
- Left da Vinci Instrument Port, 8mm (Green): Place port in a mirrored fashion relative to right port, a hand breadth lateral to the camera port and at least 3cm from the costal margin
- Primary Assistant (Lower Quadrant) Port, 12mm (A): Place port at least 8cm inferior to umbilicus and at least 4cm from the inferior instrument port
- Secondary Assistant Port, 5mm (B): Place port in upper quadrant and at least a hand breadth superior to the camera port

Medial Camera Port - 30° Down or 0° Scope

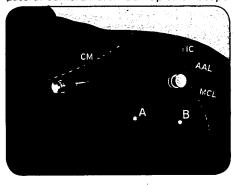


## Port Placement Option 2

## Lateral Camera Port Placement - 30° Up or 0° Scope

- da Vinci Endoscope Port, 12mm (Blue): Place port a hand breadth from costal margin, between the mid-clavicular(MCL) and anterior axillary line (AAL)
- Right da Vinci Instrument Port, 8mm (Yellow): Place port a hand breadth from the camera port and at least 3cm from the iliac crest
- Left da Vinci Instrument Port, 8mm (Green): Place port in a mirrored fashion relative to right port, a hand breadth medial to the camera port and at least 3cm from the costal margin
- Primary Assistant Port, 12mm (A): Place a peri-umbilical port within 2cm lateral of midline; may shift laterally beyond rectus muscle in obese patients
- Lower Quadrant Port, 5mm (B): Place port at least 8cm inferior to umbilicus and at least 4cm from the inferior instrument port. Assistant port in 3 arm approach or location for 4th arm instrument port

Lateral Camera Port - 30° Up or 0° Scope



## Tips for Port Placement:

- Triangulate ports toward renal hilum or tumor location
- Create obtuse angle of ~100° between robotic ports and camera port, with camera port as the vertex

## Tips & Tricks for 4th Arm Use:

- Maintain patient position of at least 60-90° lateral decubitus
- Position OR table at lowest height
- · Maximize inferior flex of OR table
- Lower quadrant port is potential location for 4th arm instrument port

## Potential Advantages of Port Placement Options:

**Option 1**: Setup similar to laparoscopic approach

#### Option 2:

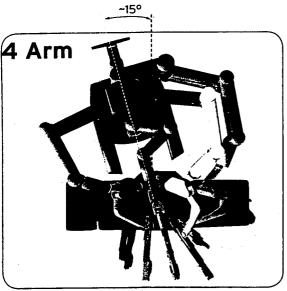
- Aerial viewing perspective
- · Decreases collisions
- Optimizes patient-side assistant access

perspective

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## Patient Cart Positioning

- · Cart approaches the patient posteriorly
- · Align camera arm, set up joint, and target anatomy
- Dock cart at ~15° to accommodate natural kidney position
- Park cart within the "sweet spot" range

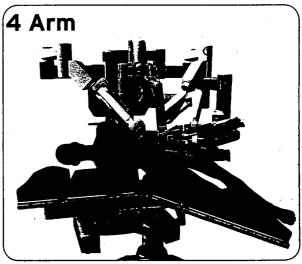


Top View of Docking - Medial Camera Method

## Docking



- Dock camera arm
  - Use port clutch and arm clutch maneuvers to align camera with target anatomy (renal hilum or tumor location)
  - If the 4th arm will be used position the camera arm set-up joint on the side opposite of the 4th arm
- Dock remaining instrument arms
  - Maximize spacing between all instrument arms



Front View of Docking - Medial Camera Method

## Partial Nephrectomy - Procedure Steps, instrumentation & Accessories

|    | Surgical Step  | Recommended<br>Instruments   | EndoWrist® Instru-<br>ment Options            | Camera/Scope & Ancillary Supplies  |
|----|--|--|---|--|
| 1  | Medial Mobilization of Colon<br>Mobilize the white line of Toldt and expose<br>anterior surface of Gerota's fascia and retroperi-<br>toneum. |  |   | Medial Camera Port: 0° or 30° down scope<br>Lateral Camera Port: 30° up or 0° scope<br>General Accessories |
| 2  | Locate Anatomical Landmarks<br>Identify the gonadal vessel and ureter.<br>Dissection follows ureter towards hilum.                           |  | Potential 4th arm • Hem-o-lok® Clip Applier*  | Laparoscopic grasper     Laparoscopic scissors     Suction/irrigation                                      |
| 3  | Hilar Dissection Dissect all renal vessels separately. Mobilize lower pole to expose.  | Hot Shears™ (Monopolar<br>Curved Scissors)<br>Maryland Bipolar Forceps |   | 5 mm clip applicator   |
| 4  | Intra-operative Ultrasound<br>Identify resection margins and depth.  |  | Graspers • PK™Forceps                         | Intra-operative ultrasound probe   |
| 5  | Expose Renal Surface and Score Tumor<br>Circumference  |  | • ProGrasp™ For-<br>ceps<br>• Cadiere Forceps |  |
| 6  | Occlude Renal Vessels  |  |   | Bulldogs or Satinsky clamp   |
| 7  | Tumor Excision Use cold cut technique for resection.   | Hot Shears<br>Maryland Bipolar Forceps                                 | Scissors • Round Tip                          |  |
| 8  | Close Collecting System & Suture Small Vessels   |  |   | 3.0 Vicryl® SH or RB-1 needle, cut to 8"   |
| 9  | Reapproximate Renal Defect Use hemostatic agents to control bleeding on renal surface. Suture the capsule over hemostatic bolsters.          | SutureCut™ Needle Driver<br>Large Needle Driver                        | Monopolar Cautery • Cautery Hook              | O Vicryl on CT-1 or SH needle, cut to 8"  Hemostatic agents and bolsters                                   |
| 10 | Remove Hilar Clamp<br>Confirm hemostasis, reapproximate Gerota's<br>fascia and remove specimen.  |  |   | 10mm specimen bag  |

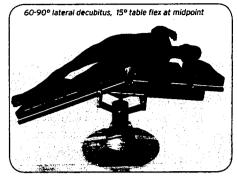
<sup>\*</sup>Available 03 2007. Contraindication (Statement from Teleflex Medical): "Hem-o-lok ligating clips (REF 544240, Hem-o-lok L) are contraindicated for use in ligating the renal artery during laparoscopic donor nephrectomies."

## Patient Positioning & Preparation

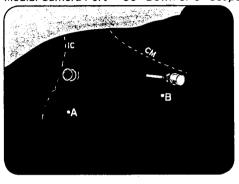
All steps performed before port placement

- Place endotracheal and nasogastric/orogastric tube
- 2. Insert Foley catheter
- 3. Position patient
- 4. Support arms with padding
- 5. Pad pressure points and secure position
- 6. Place lower body warmer
- 7. Shave and prep patient
- 8. Insufflate abdomen
- Mark iliac crest, costal margin and port sites

#### Lateral "Full" Flank Position



Medial Camera Port - 30° Down or 0° Scope



## Port Placement Option 1.

## Medial Camera Port Placement - 30° Down or 0° Scope

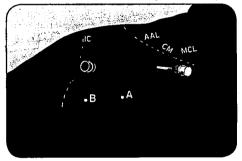
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- Secondary Assistant Port, 5mm (B): Place port in upper quadrant, at least a hand breadth superior to the camera port
- Subxyphoid, 5mm: May be placed for liver retraction a hand breadth inferior to xyphoid process

## Port Placement Option 2

## Lateral Camera Port Placement - 30° Up or 0° Scope

- da Vinci Endoscope Port, 12mm (Blue): Place port a hand breadth from costal margin, between the mid-clavicular (MCL) and anterior axillary line (AAL)
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- Primary Assistant Port, 12mm (A): Place a peri-umbilical port within 2cm lateral of midline; may shift laterally beyond rectus muscle in obese patients
- Lower Quadrant Port, 5mm (B): Place port at least 8cm inferior to umbilicus and at least 4cm from the inferior instrument port
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Lateral Camera Port - 30° Up or 0° Scope



## Tips for Port Placement:

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#### Tips & Tricks for 4th Arm Use:

- Maintain patient position of at least 60-90° lateral decubitus
- · Position OR table at lowest height
- · Maximize inferior flex of OR table
- Lower quadrant port is potential location for 4th arm instrument port

## Potential Advantages of Port Placement Options:

**Option 1**: Setup similar to laparoscopic approach

### Option 2:

- · Aerial viewing perspective
- Decreases collisions
- · Optimizes patient-side assistant access

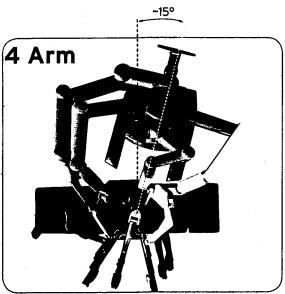
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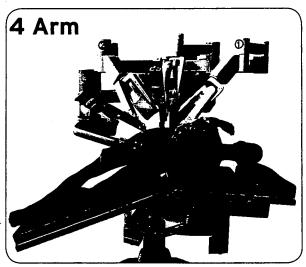


Top View of Docking - Lateral Camera Method

## Docking



- Dock camera arm
  - Use port clutch and arm clutch maneuvers to align camera with target anatomy (renal hilum or tumor location)
  - If the 4th arm will be used position the camera arm set-up joint on the side opposite of the 4th arm
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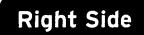
Front View of Docking - Lateral Camera Method

## Partial Nephrectomy - Procedure Steps, instrumentation & Accessories

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|----|--|--|---|--|
| 1  | Medial Mobilization of Colon<br>Mobilize the white line of Toldt and expose<br>anterior surface of Gerota's fascia and retroperi-<br>toneum. |  |   | Mediał Camera Port: 0° or 30° down scope Lateral Camera Port: 30° up or 0° scope General Accessories |
| 2  | Locate Anatomical Landmarks<br>Identify the gonadal vessel and ureter.<br>Dissection follows ureter towards hilum.                           |  | Potential 4th arm • Hem-o-lok® Clip Applier*            | Laparoscopic grasper     Laparoscopic scissors     Suction/irrigation                                |
| 3  | Hilar Dissection<br>Dissect all renal vessels separately.<br>Mobilize lower pole to expose.  | Hot Shears™ (Monopolar<br>Curved Scissors)<br>Maryland Bipolar Forceps | Graspers  | 5 mm clip applicator   |
| 4  | Intra-operative Ultrasound<br>Identify resection margins and depth.  |  | <ul> <li>PK™ Forceps</li> <li>ProGrasp™ For-</li> </ul> | Intra-operative ultrasound probe   |
| 5  | Expose Renal Surface and Score Tumor<br>Circumference  |  | ceps Cadiere Forceps                                    |  |
| 6  | Occlude Renal Vessels  |  |   | Bulldogs or Satinsky clamp   |
| 7  | Tumor Excision Use cold cut technique for resection.   | Hot Shears<br>Maryland Bipolar Forceps                                 | Scissors • Round Tip                                    |  |
| 8  | Close Collecting System & Suture Small Vessels   |  |   | 3.0 Vicryl® SH or RB-1 needle, cut to 8"   |
| 9  | Reapproximate Renal Defect Use hemostatic agents to control bleeding on renal surface. Suture the capsule over hemostatic bolsters.          | SutureCut™ Needle Driver<br>Large Needle Driver                        | Monopolar Cautery - Cautery Hook                        | O Vicryl on CT-1 or SH needle, cut to 8"  Hemostatic agents and bolsters                             |
| 10 | Remove Hilar Clamp<br>Confirm hemostasis, reapproximate Gerota's<br>fascia and remove specimen.  |  |   | 10mm specimen bag  |

\*Available Q3 2007. Contraindication (Statement from Teleflex Medical): "Hem-o-lok ligating clips (REF 544240, Hem-o-lok L) are contraindicated for use in ligating the renal artery during laparoscopic

donor nephrectomies."



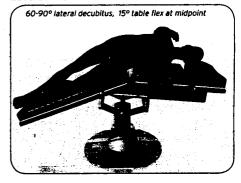
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## Patient Positioning & Preparation

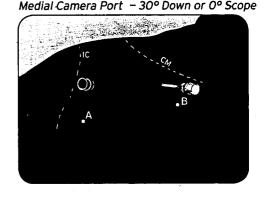
All steps performed before port placement

- Place endotracheal and nasogastric/orogastric tube
- 2. Insert Foley catheter
- 3. Position patient
- 4. Support arms with padding
- 5. Pad pressure points and secure position
- 6. Place lower body warmer
- 7. Shave and prep patient
- 8. Insufflate abdomen
- Mark iliac crest, costal margin and port sites

#### Lateral "Full" Flank Position



## o scope



## Port Placement Option 1

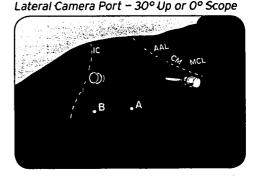
## Medial Camera Port Placement - 30° Down or 0° Scope

- da Vinci Endoscope Port, 12mm (Blue): Place peri-umbilical camera port; may shift laterally beyond rectus muscle in obese patients
- Right da Vinci Instrument Port, 8mm (Yellow): Place port a hand breadth lateral to the camera port and at least 3cm from the costal margin
- Left da Vinci Instrument Port, 8mm (Green): Place port in a mirrored fashion relative to right port, a hand breadth lateral to the camera port and at least 3cm from the iliac crest
- Primary Assistant (Lower Quadrant) Port, 12mm (A): Place port at least 8cm inferior to umbilicus and at least 4cm from the inferior instrument port
- Secondary Assistant Port, 5mm (B): Place port in upper quadrant, at least a hand breadth superior to the camera port
- Subxyphoid, 5mm: May be placed for liver retraction a hand breadth inferior to xyphoid process

## Port Placement Option 2

## Lateral Camera Port Placement - 30° Up or 0° Scope

- da Vinci Endoscope Port, 12mm (Blue): Place port a hand breadth from costal margin, between the mid-clavicular(MCL) and anterior axillary line (AAL)
- Right da Vinci Instrument Port, 8mm (Yellow): Place port a hand breadth medial to the camera port and at least 3cm from the costal margin
- Left da Vinci Instrument Port, 8mm (Green): Place port in a mirrored fashion relative to right port, a hand breadth medial to the camera port and at least 3cm from the iliac crest
- Primary Assistant Port, 12mm (A): Place a peri-umbilical port within 2cm lateral of midline; may shift laterally beyond rectus muscle in obese patients
- Lower Quadrant Port, 5mm (B): Place port at least 8cm inferior to umbilicus and at least 4cm from the inferior instrument port
- Subxyphoid, 5mm: May be placed for liver retraction a hand breadth inferior to xyphoid process



## Tips for Port Placement:

- Triangulate ports toward renal hilum
- Create obtuse angle of ~100° between robotic ports and camera port, with camera port as the vertex

#### Tips & Tricks for 4th Arm Use:

- Maintain patient position of at least 60-90° lateral decubitus
- · Position OR table at lowest height
- Maximize inferior flex of OR table
- Lower quadrant port is potential location for 4th arm instrument port

## Potential Advantages of Port Placement Options:

**Option 1**: Setup similar to laparoscopic approach

### Option 2:

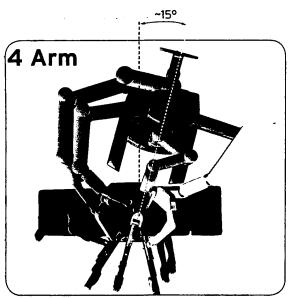
- Aerial viewing perspective
- Decreases collisions
- Optimizes patient-side assistant access

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## Patient Cart Positioning

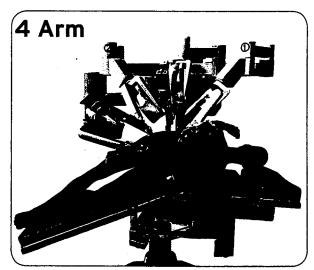
- · Cart approaches the patient posteriorly
- · Align camera arm, set up joint, and target anatomy
- Dock cart at ~15° to accommodate natural kidney position
- · Park cart within the "sweet spot" range



Top View of Docking - Lateral Camera Method

## Docking

- · Dock camera arm
  - Use port clutch and arm clutch maneuvers to align camera with target anatomy (renal hilum)
  - If the 4th arm will be used position the camera arm set-up joint on the side opposite of the 4th arm
- · Dock remaining instrument arms
  - Maximize spacing between all instrument arms



Front View of Docking - Lateral Camera Method

## Nephrectomy - Procedure Steps, Instrumentation & Accessories

|   | Surgical Step  | Recommended Instruments                         | EndoWrist®<br>Instrument Options  | Camera/Scope & Ancillary Supplies  |   |
|---|--|---|---|--|---|
| 1 | Mediał Mobilization of Colon<br>Mobilize the white line of Toldt and expose<br>anterior surface of Gerota's fascia and<br>retroperitoneum.   |   | Potential 4th arm • Hem-o-lok® Clip Applier*  Graspers • PK™ Forceps • Prograsp Forceps • Cadiere Forceps  Scissors • Round Tip  Monopolar • Cautery Hook |  | Medial Camera Port: 0° or 30° down scope Lateral Camera Port: 30° up or 0° scope  General Accessories |
| 2 | Locate Anatomical Landmarks<br>Identify the gonadal vessel and ureter.<br>Dissection follows ureter towards hilum.   | Hot Shears™<br>Maryland Bipolar Forceps         |   | Laparoscopic grasper     Laparoscopic scissors     Suction/irrigation  |   |
| 3 | Hilar Dissection Dissect all renal vessels separately. Mobilize lower pole to expose.  | -   |   | 5 mm clip applicator   |   |
| 4 | Ligate Renal Vessels (suture ligation technique) Double ligate the proximal side of vessels and single ligate distally prior to transecting vessels. Arterial ligation precedes venous ligation. | SutureCut™ Needle Driver<br>Large Needle Driver |   | Suture Ligation Technique O-Silk Ties, cut to 5" 2.0 Silk Ties cut to 5" (small vessels)  Alternative Ligation Technique: Vessel clips or vascualr stapling device |   |
| 5 | Transect Vessels Transect renal vessels with scissors.   | Hot Shears™                                     |   |  |   |
| 6 | Circumferential Renal Dissection Free kidney from retroperitoneal attachments.   |   |   |  |   |
| 7 | Ureteral Dissection and Transection<br>Trace ureter to distal limits, ligate and<br>divide.  | Hot Shears™<br>Maryland Bipolar Forceps         |   | Ligation device or vessel clips  |   |
| 8 | Remove Kidney<br>Extend incision and remove specimen   |   |   | 15mm specimen bag  |   |

<sup>\*</sup>Available Q3 2007. Contraindication (Statement from Teleflex Medical): "Hem-o-lok ligating clips (REF 544240, Hem-o-lok L) are contraindicated for use in ligating the renal artery during laparoscopic dapar, pentite tomies."

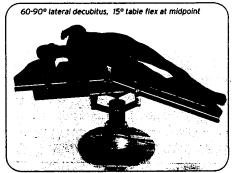


## Patient Positioning & Preparation

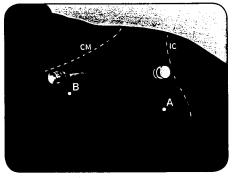
All steps performed before port placement

- Place endotracheal and nasogastric/orogastric tube
- 2. Insert Foley catheter
- 3. Position patient
- 4. Support arms with padding
- 5. Pad pressure points and secure position
- 6. Place lower body warmer
- 7. Shave and prep patient
- 8. Insufflate abdomen
- Mark iliac crest, costal margin and port sites

### Lateral "Full" Flank Position



Medial Camera Port - 30° Down or 0° Scope



## Port Placement Option 1

## Medial Camera Port Placement - 30° Down or 0° Scope

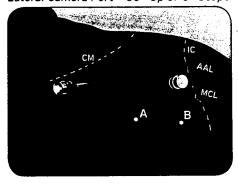
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## Port Placement Option 2

## Lateral Camera Port Placement - 30° Up or 0° Scope

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- Lower Quadrant Port, 5mm (B): Place port at least 8cm inferior to umbilicus and at least 4cm from the inferior instrument port. Assistant port in 3 arm approach or location for 4th arm instrument port

### Lateral Camera Port - 30° Up or 0° Scope



#### Tips for Port Placement:

- · Triangulate ports toward renal hilum
- Create obtuse angle of ~100° between robotic ports and camera port, with camera port as the vertex

#### Tips & Tricks for 4th Arm Use:

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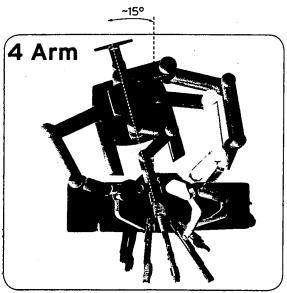
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## Patient Cart Positioning

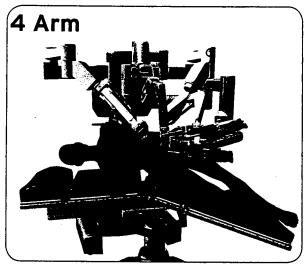
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Top View of Docking - Medial Camera Method

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  - Maximize spacing between all instrument arms



Front View of Docking - Medial Camera Method

## Nephrectomy - Procedure Steps, instrumentar or & Accessories

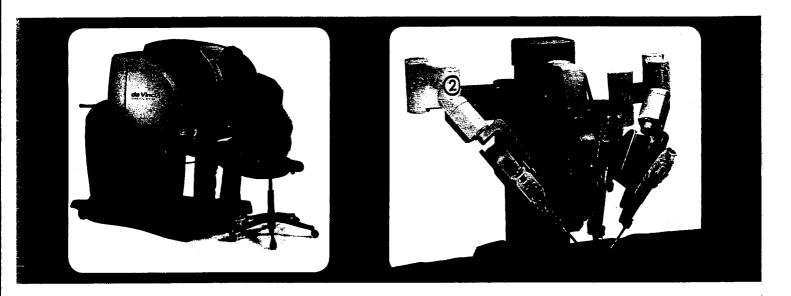
|   | Surgical Step  | Recommended<br>Instruments                      | EndoWrist® Instrument Options   | Camera/Scope & Ancillary Supplies   |
|---|--|---|---|---|
| 1 | Medial Mobilization of Colon<br>Mobilize the white line of Toldt and expose<br>anterior surface of Gerota's fascia and<br>retroperitoneum.   |   | Potential 4th arm • Hem-o-lok® Clip Applier*  Graspers • PK™ Forceps • Prograsp Forceps • Cadiere Forceps Scissors • Round Tip Monopolar • Cautery Hook | Medial Camera Port: 0° or 30° down scope Lateral Camera Port: 30° up or 0° scope General Accessories  |
| 2 | Locate Anatomical Landmarks<br>Identify the gonadal vessel and ureter.<br>Dissection follows ureter towards hilum.   | Hot Shears™<br>Maryland Bipolar Forceps         |   | Laparoscopic grasper     Laparoscopic scissors     Suction/irrigation   |
| 3 | Hilar Dissection Dissect all renal vessels separately. Mobilize lower pole to expose.  |   |   | 5 mm clip applicator  |
| 4 | Ligate Renal Vessels (suture ligation technique) Double ligate the proximal side of vessels and single ligate distally prior to transect- ing vessels. Arterial ligation precedes venous ligation. | SutureCut™ Needle Driver<br>Large Needle Driver |   | Suture Ligation Technique 0-Silk Ties, cut to 5" 2.0 Silk Ties cut to 5" (small vessels) Alternative Ligation Technique: Vessel clips or vascualr stapling device |
| 5 | Transect Vessels Transect renal vessels with scissors.   | Hot Shears™                                     |   |   |
| 6 | Circumferential Renal Dissection<br>Free kidney from retroperitoneal attach-<br>ments.   |   |   |   |
| 7 | Ureteral Dissection and Transection<br>Trace ureter to distal limits, ligate and<br>divide.  | Hot Shears™<br>Maryland Bipolar Forceps         |   | Ligation device or vessel clips   |
| 8 | Remove Kidney<br>Extend incision and remove specimen   |   |   | 15mm specimen bag   |

<sup>&</sup>quot;Available Q3 2007. Contraindication (Statement from Teleflex Medical): "Hem-o-lok ligating clips (REF 544240, Hem-o-lok L) are contraindicated for use in ligating the renal artery during laparoscopic donor nephrectomies."

Left Side



# 3-Arm System



Only da Vinci is designed to help the surgeon transcend the limitations of conventional surgical technologies to provide a minimally invasive option for many complex procedures.

Now, the most advanced platform for minimally invasive surgery is available in a 3-arm configuration. This upgradeable system is configured to provide da Vinci's core functionality, and can be an appropriate choice for organizations seeking to leverage market opportunities while meeting budgetary goals. Later upgrades of a 4th arm (3rd instrument arm); TilePro<sup>TM</sup>, a multi-input video display; a telestration-enabled touchscreen monitor and HD vision complete the technological foundation of a world-class robotics program.

The 3-arm S system features the same core components that are the foundation of any da Vinci System:

- An ergonomically designed surgeon's console
- A patient-side cart with three robotic arms
- A high-performance 3D vision system
- Proprietary EndoWrist® instrumentation.

The net result is an intuitive interface that provides breakthrough surgical capabilities and fast, foolproof set up.

Two field upgrade packages are available to complete your da Vinci System ...

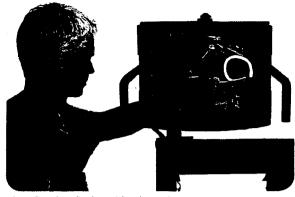




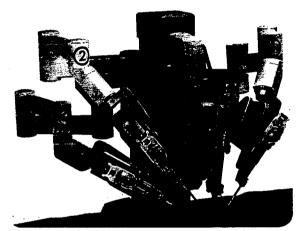
## 3-Arm System Field Upgrade Packages

## 4th-arm, *TilePro™* Display, Touchscreen with Telestration & Intercom Upgrade:

- 4th arm (3rd instrument arm) for retraction, self-assistance from the surgeon console
- TilePro™ multi-input video display, for an integrated view of patient-critical information
- Integrated touchscreen monitor, featuring
  - Telestration for improved proctoring and team communication
  - Patient-side scope configuration
  - Convenient vision-cart mounting
- Surgeon console to patient-side intercom enabled



TilePro™ video display with telestration



Patient Cart with 4th-arm

## **HD Vision Upgrade:**

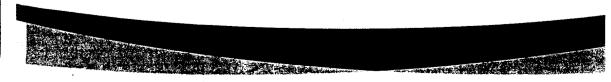
Featuring ...

- Twice the effective viewing resolution, for improved clarity, detail of tissue planes & critical anatomy
- Panoramic 16:9 aspect ratio is 30% wider, providing 20% more viewing area
- Digital zoom, designed to minimize interference between endoscope and instruments

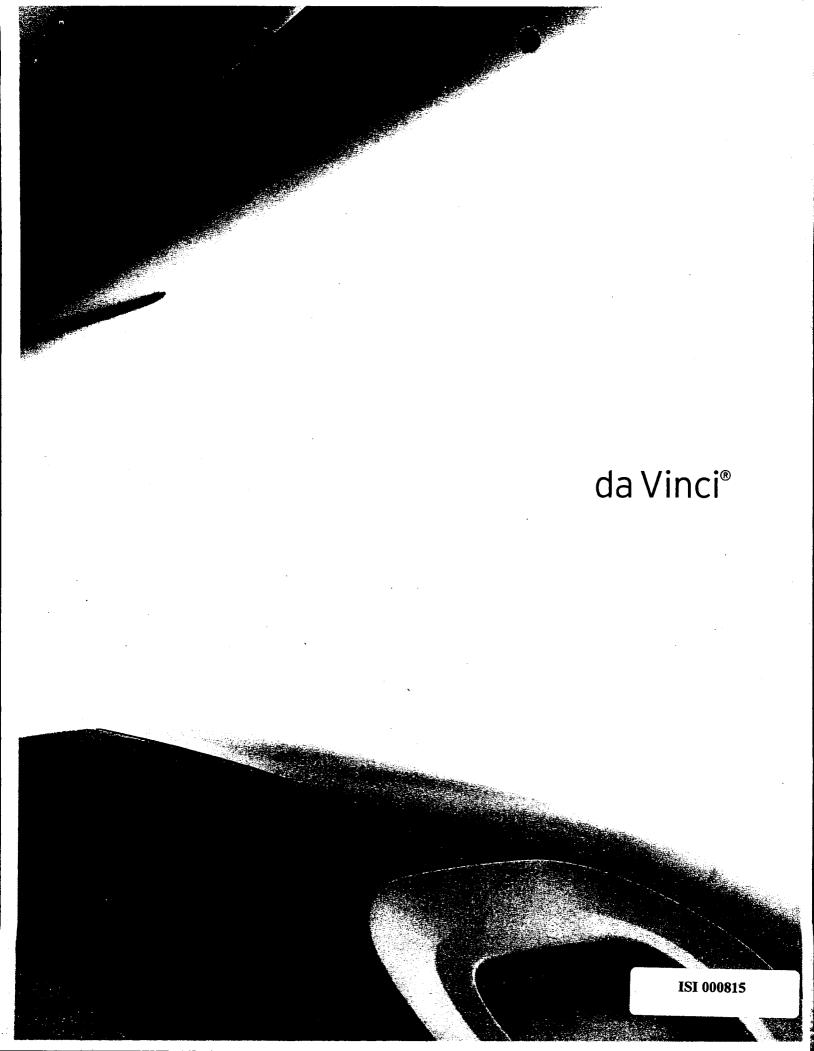


16:9 view is 30% wider with twice the effective viewing resolution

To learn more about the *da Vinci* System, call toll-free, +1.888.409.4774 or direct, +1.408.523.2100. Outside the US, call toll-free, +00800.46.88.78.74, direct +41.21.821.20.20 or visit www.intuitivesurgical.com for a list of distributors.







# INTUITIVE SURGICAL®



## Mission

To extend the benefits of minimally invasive surgery to the broadest possible base of patients.

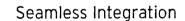
## Vision

Taking surgical precision beyond the limits of the human hand.

Solution da Vinci

# da Vinci® Surgical System

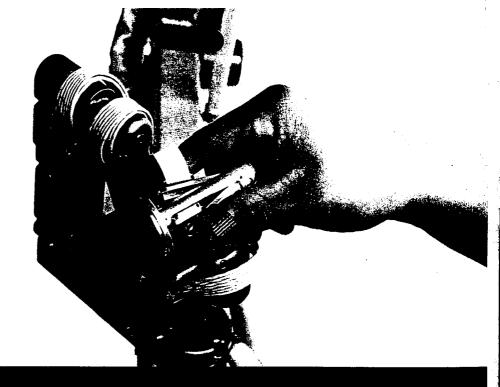
Only da Vinci transcends the limitations of both open surgery and laparoscopy, expanding the surgeon's capabilities—and for the first time—offering a minimally invasive option for many complex procedures.



- High-resolution, 3D video
- Fully articulating instruments
- State of the art robotic technology

## Net Result

The virtual extension of the surgeon's eyes and hands into the surgical site.



For surgeons Unparalleled dexterity, precision and control.

For patients Shorter LOS, lower complication rates, less post-op

pain and superior outcomes.

For hospitals — Increased patient satisfaction, improved operating

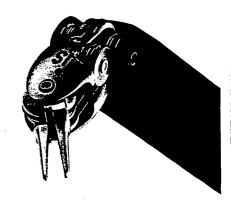
efficiencies and significant market share gain.

## Proven

- ~400 da Vinci Surgical Systems installed worldwide
- · Thousands of scientific publications and presentations
- Tens of thousands of satisfied patients

## Commitment

Intuitive Surgical is committed to ongoing product development and service in order to expand the utility, utilization and longevity of every da Vinci product.





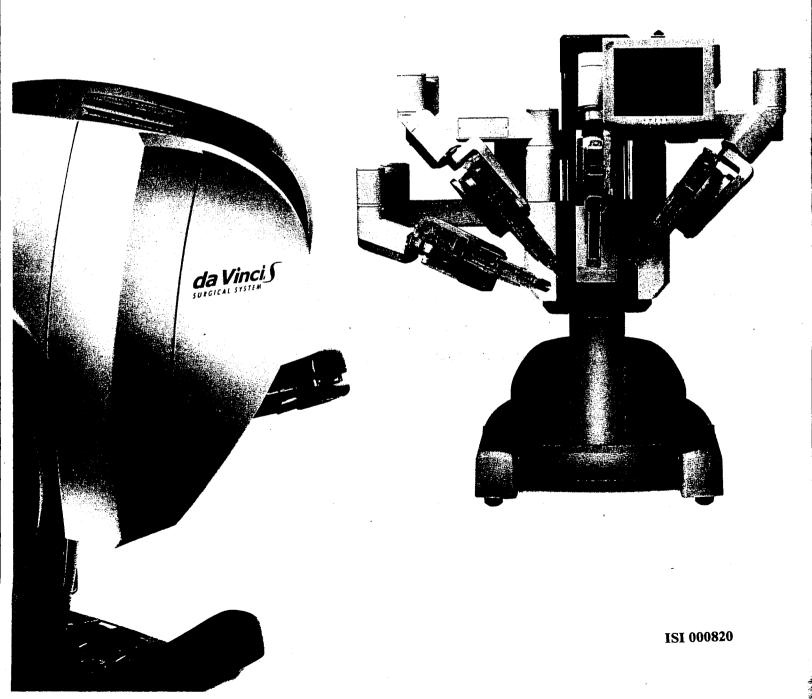
## Streamlining Surgery

A streamlined surgical experience that benefits the surgeon, the OR team and the patient.

- Fast foolproof setup
- Rapid instrument exchange

- Multi-quadrant access
- Interactive video displays

The da Vinci S will keep you at the forefront of minimally invasive surgery as it accommodates tomorrow's HD video technology, high-speed networking and image guidance systems.

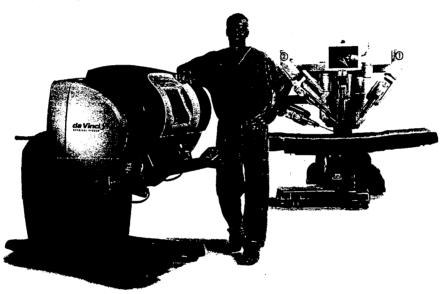


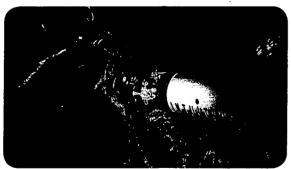


## **Experience Surgery in High Definition**

The da Vinci S with 3D HD vision is the most advanced platform for minimally invasive surgery available today.

The da Vinci S Surgical System integrates 3D HD endoscopy and state-of-the-art robotic technology to virtually extend the surgeon's eyes and hands into the surgical field. Only the da Vinci System can enable new, minimally invasive options for complex surgical procedures.





16:9 view is 30% wider with twice the effective viewing resolution



Interactive TilePro™ video display with telestration

## Consisting of three networked components...

- · An ergonomic surgeon's console;
- · A patient cart with four interactive, robotic arms
- A high definition, 3D vision system for unparalleled visualization
- ... the *da Vinci S* System is designed to help the surgeon transcend the limitations of conventional surgical technologies.





## Features and Benefits



## Unparalleled 3D HD Visualization

- · World's first robotic surgical system with 3D HD vision
- Twice the effective viewing resolution provides improved clarity and detail of tissue planes and critical anatomy
- Panoramic 16:9 aspect ratio is 30% wider, providing 20% more viewing area
- Digital zoom reduces interference between endoscope and instruments
- 0° and 30° stereo endoscopes



## **Enhanced Dexterity, Precision & Control**

- Precise fingertip control of fully articulating EndoWrist® Instruments
- Motion scaling & tremor reduction
- Patented Intuitive® Movement
- Large range of motion robotic arms and extended length instruments enable multi-quadrant access
- Slim, telescoping instrument arms provide better patient access and optimal port placement
- Broad selection of 8mm and 5mm EndoWrist instruments

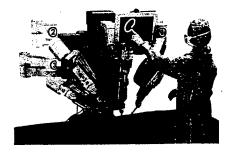


## **Superior Ergonomics**

- · Optimal hand-eye alignment
- · Immersive stereo viewer
- · Comfortable seated posture

## Fast, Foolproof Setup

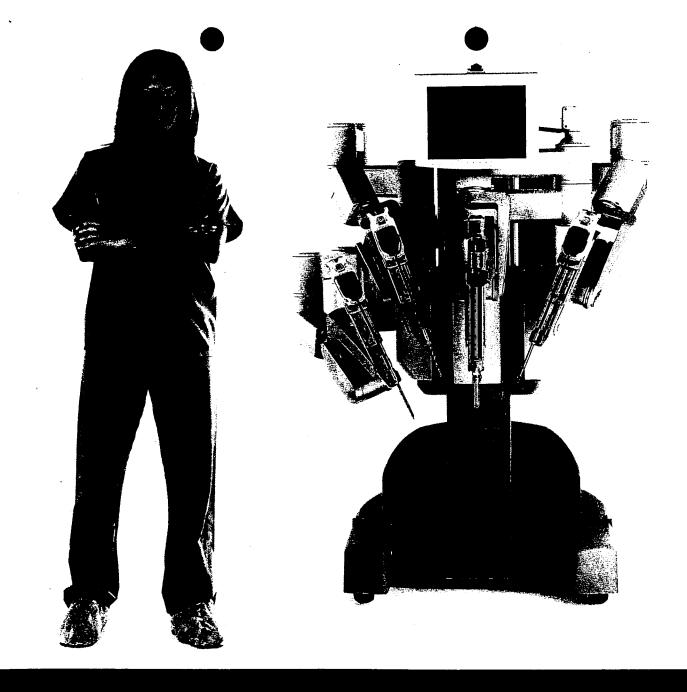
- · Motorized Patient Cart
- · Quick-click cannula mounts for simplified patient docking
- · Integrated 4th arm for rapid deployment
- Touchscreen scope configuration
- · Single high-speed fiber-optic connection
- · Single-use sterile adaptors with integrated drapes



## Streamlined Interface

- · Integrated touchscreen monitor
- Telestration for improved proctoring and team communication
- TilePro's™ multi-input display allows an integrated view of patient critical information
- · Intuitive status LEDs & icons





To learn more about da Vinci products, contact an Intuitive Surgical representative at +1.888.409.4774.



Taking Surgical Precision Beyond the Limits of the Human Hand.™

US Sales: Toll Free: 1.888.409.4774 Direct: 1.408.523.2100 International:

Toll Free: +00800.46.88.78.74

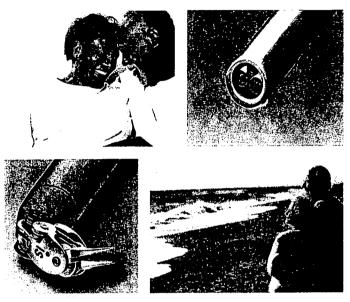
Direct: +41.21.821.20.20

www.intuitivesurgical.com

While clinical studies support the use of the da Vinci System as a state of tool for minimally invasive surgery, individual outcomes may vary.

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# SURGICAL SURGICAL





"Taking surgical precision and technique beyond the limits of the human hand"™ "This is modern medicine at its very best" Dr. Michael Irish, Pediatric Surgeon at Blank Children's Hospital in Des Moines. Iowa following the removal of a mediastinal mass from a five day old, eight-pound infant using the da Vinci® Surgical System.

## **Enhancing Surgical Capability**

## **Improving Clinical Outcomes**

## **Driving Operational Efficiencies**

## **Corporate Overview**

Surgical robotics were little more than a medical curiosity until 1998; the year Intuitive Surgical introduced the *da Vinci*® Surgical System. Today, Intuitive Surgical is the global leader in the rapidly emerging field of robotic-assisted surgery. By enhancing surgical capability, our aim is to provide surgeons and hospitals with the tools needed to improve clinical outcomes and to help patients return to active and productive lives.

## Corporate Vitality

- > NASDAQ ISRG
- > Growth in excess of 25% annually
- > Large installed base academic and community hospitals
- > Broad utilization in cardiac, urologic, pediatric and general surgery

## World-Class Partners

- > Ethicon Endo-Surgery
- > Medtronic
- > Olympus

### Commitment to Success

- > Focus on the customer
- > Aggressively fund R&D
- > Build a sustainable business



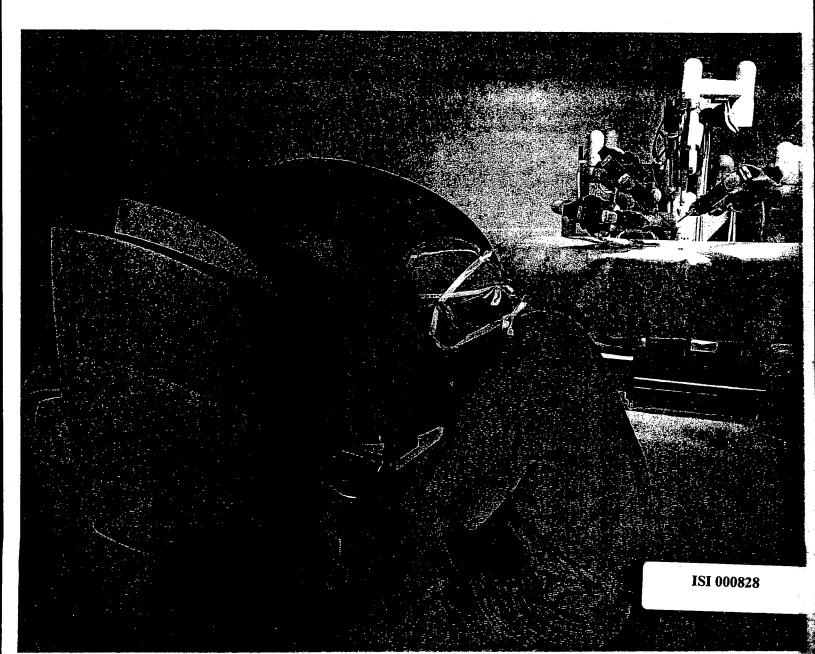


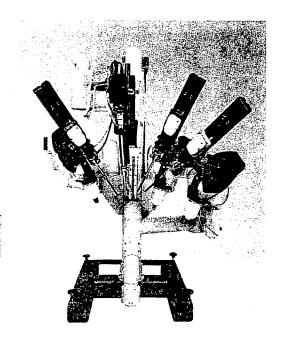


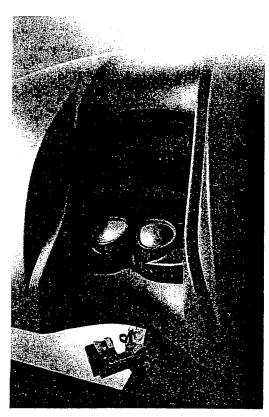
# Superior Visualization, Enhanced Dexterity Greater Surgical Precision and Ergonomic Comfort

da Vinci® Surgical System

The da Vinci® Surgical System consists of an ergonomically designed surgeon's console, a patient-side cart with four interactive robotic arms, a high-performance vision system and proprietary EndoWrist® Instruments. Powered by state-of-the-art robotic technology, the surgeon's hand movements are scaled, filtered and seamlessly translated into precise movements of the EndoWrist Instruments. The net result; an intuitive interface with breakthrough surgical capabilities.







## **Superior Visualization**

- > Revolutionary 3-channel vision system
- > High resolution 3-D image
- > Panoramic view of the surgical field

## **Enhanced Dexterity, Precision & Control**

- > 4 robotic arms enable Solo Surgery™
- > Fingertip control of EndoWrist® Instruments
- > 7 degrees of freedom 90 degrees of articulation
- > Motion scaling and tremor reduction

## **Superior Ergonomics**

- > Optimal alignment of visual and motor axes
- > Immersive high resolution stereo viewer
- > Comfortable seated posture







## Breakthrough Capabilities, Improved Anical Outcomes

## **Clinical Validation**

The da Vinci® Surgical System has FDA clearance for a wide variety of surgical procedures. Intuitive Surgical works closely with surgeons to develop and bring into practice new surgical procedures that improve clinical outcomes and redefine the standard of care.

### Cardiac

"In MVST (Multi-Vessel Small Thoracotomy) our patients avoid sternotomy, CPB and aortic manipulation. As a result they benefit from reduced morbidity, shortened hospital stay, faster recovery and improvement of postoperative quality of life."

Michael Argenziano, M.D.

Assistant Professor of Surgery

Columbia University College of Physicians and Surgeons, New York Presbyterian Hospital

"The da Vinci® System makes it possible to offer a wider range of patients a minimally invasive open-heart procedure to repair the mitral valve. This will allow more patients to benefit from both shorter hospital stays and reduced recovery times."

W. Randolph Chitwood, Jr. M.D.
Professor and Chairman Department of Surgery
Chief of Cardiothoracic Surgery
East Carolina University School of Medicine

## Urology

"As a trained surgical oncologist, da Vinci has allowed me to offer my patients a better cancer operation with improved clinical outcomes."

Thomas E. Ahlering, M.D.
Associate Professor of Urology
Director, Urological Oncology
University of California Irvine Medical Center

"In my experience, robotics allows for greater surgical precision which leads to improvements in cancer control, potency, and urinary function."

Mani Menon, M.D. Director, Vattikuti Urology Institute Henry Ford Health System

## General Surgery

"I can achieve superb clinical results in technically demanding operations such as Heller myotomy and Esophagectomy with fewer complications."

Santiago Horgan, M.D. Director of Minimally Invasive Surgery, University of Illinois, Chicago

# Patient Satisfaction, A New Standard of Care

Clinical Effectiveness

## Comparison of relevant clinical variables for Mitral Valve repair: Sternotomy vs. da Vinci® Surgical System

| Data                       | 01 STS National<br>abase Sternotomy<br>tral Valve Repair*** | da Vinci Mitral<br>Valve Repair**** | da Vinci MVR<br>Post-Learning Curve |
|----------------------------|---|-------------------------------------|-------------------------------------|
| Number                     | 893   | 22 `                                | 12                                  |
| Mortality                  | 2.2%  | 0%                                  | 0%                                  |
| Major Complications        | 13.1%   | 0%                                  | 0%                                  |
| Neurological Complications | 2.4%  | 0%                                  | 0%                                  |
| Cross-Clamp Time (Min)     | 85.5  | 86                                  | 76                                  |
| CPB (Min)                  | 121   | 124                                 | 113                                 |
| Post-Op-LOS (Days)         | 8.5   | 4.2                                 | 1.3                                 |



## Comparison of Open Prostatectomy, Laparoscopic and VIP (Robotic)

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| Open | Laparoscopic                        | VIP (Robotic)**   |
|------|-------------------------------------|---|
| 100  | 50                                  | 100   |
| 164  | 248                                 | 160   |
| 900  | 380                                 | 153   |
| 24   | 24                                  | 5   |
| 15   | 10                                  | 5   |
| 15   | 10                                  | 5   |
| 3.5  | 1.3                                 | 1.2   |
|      | 100<br>164<br>900<br>24<br>15<br>15 | 100 50<br>164 248<br>900 380<br>24 24<br>15 10<br>15 10 |

## Comparison of Laparoscopic and da Vinci™ Heller Myotomy

| Results                | Laparoscopic* | da Vinci Heller<br>Myotomy** |
|------------------------|---------------|------------------------------|
| Number                 | 100           | 50                           |
| Mucosal Perforation    | 8%            | 0%                           |
| Relief from Dysphagia  | 93%           | 100%                         |
| Post-Op GER            | 17%           | 10%                          |
| Operative time, Min.   | 173           | 120                          |
| Hospitalization, Hours | 48            | 36                           |

Sources: "TN=893 from The Society of Thoracic Surgeons (STS), National Cardiac Surgery Database, Isolate's Mitral Valve Reciair Procedures, Jan-Jun 2001 "TD Data from STS 2001 not available. """Data used as part of 112 patient, multi-cemer, de Vinci mitral valve repair clinical fract de Vinci Robotic Mitral Valve Repair. Curpatient Procedure? Par S. Pappas, M.D., et. al. Advicate i, first Poppar.

Chicago, IL.
11 Merica, M. Robaic Radical Retrioudic Prostatectomy Bull Int. 31(2): 175. February 2008.

<sup>18</sup> ratio KW, et al., 160 consecutive minimally in lance Heller moditimes: leasons learned. Ann Surg 235/53: 631-636: 000 (185) alaph Horgani, M.D. University of Illinois. Chinago,

<sup>1949</sup> risia used, the values for the reference standard roben RPF were considered the index value, with values in Aponton in Telerenced to

## Broad Econon Impact

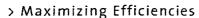
**Economic Efficacy** 

A sound technology acquisition model seeks to align net health outcomes with the economic value of innovation. When costs and benefits are weighed together, technological advances over time have proven to be worth far more than their costs<sup>1</sup>.

A technology assessment of the *da Vinci*® Surgical System will demonstrate broad hospital-wide benefit in the areas of market share growth, utilization mix, productivity and efficiency.



- > Increased patient satisfaction
- > New patients and increased referrals
- > Recruitment and retention of top surgical talent
- > Enhanced hospital reputation



- > Decreased length of stay
- > Decreased complications
- > Decreased blood transfusions
- > Decreased nursing staff ratios
- > Decreased post-op pain management



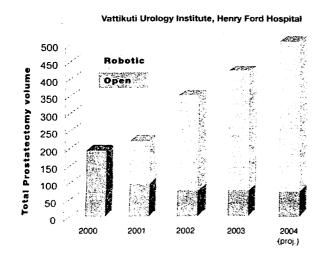
> Application across multiple surgical specialties







## Hospital Impact: Robotic Prostatectomy Program, Henry Ford Health System



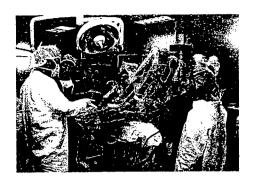
"Growth is a very important component of our business formula. We've seen double-digit increases in the number of prostate cases performed since we introduced the da Vinci Surgical System. Furthermore, robotic surgery has opened the door for a lot of patients that probably would have gone elsewhere in the past."

Nancy M. Schlichting, President and CEO Henry Ford Health System Detroit, Michigan

# Comprehensive Surgical Team Training

**Clinical Training** 

Clinical training and support are essential to fulfilling the hospital's strategic plan of developing a successful surgical robotics program. Intuitive Surgical has developed a comprehensive training continuum to ensure optimal safety, efficacy and utilization of the da Vinci® System.



## Intuitive Surgical Training Programs

Intuitive Surgical training programs are specific to the operation of the

## System Training >>

- > Surgical Team Approach
- > Didactic
- > Hands-On

da Vinci Surgical System

- > Inanimate Labs
- > Robotic Skill Development

## Clinical Training >>

- > Case Study Review
- > Live Case Observation
- > Cadaveric Labs
- > Clinical Robotic Skill Development



## **Accredited Training**

## Procedure Training >>

- > Academic Institutions
- > Expert Robotic Surgeons
- > Live Case Observation
- > CME Credits
- > Proctoring

Training Centers for Robotic Surgery

- > Boston Children's Hospital Boston, MA
- > Centennial Medical Center Nashville, TN
- > East Carolina University Hospital Greenville, NC
- > Hackensack University Medical Center Hackensack, NJ
- > Johns Hopkins University Hospital Baltimore, MD
- > L'institut Mutualiste Montsouris Paris, france
- > Memorial Hermann Medical Center Houston, TX
- > Ohio State University Hospital Columbus, OH

- > Presidio Ospedaliero della Misericordia Grosseto, Italy
- > St. Pierre Hospital Brussels, Belguim
- > Skejby Sygehus Arhus, Denmark
- > University of Illinois, Chicago Chicago, IL
- > University of Minnesota Minneapolis, MN
- > University of California Irvine Irvine, CA
- > University of Southern California Los Angeles, CA
- > Utrecht Medical Center The Netherlands

# Technical Support Programs

Customer Support: 24 x 7

Intuitive Surgical offers a complete range of support agreements to ensure optimal performance and "up-time" of the da Vinci® Surgical System. Tiered customer support plans range from the maximum protection afforded by our Premium Service Plan to economical plans tailored to meet the individual requirements of your hospital.

Intuitive Surgical Service Plans

## Premium Support

- > 98% Up-Time Guarantee
- > Priority Software Upgrades
- > Endoscope Exchange Program

#### **Full Service**

- > 24 Hour Response Time
- > Periodic Software Upgrades
- > Preferred Endoscope Pricing







Additionally, all Intuitive Surgical Service Plans include:

- > Preventative Maintenance
- > Parts Exchange
- > Labor and Travel
- > Multi-Year Agreements
- > Manned Call Center 24 x 7
- > Worldwide team of Field Engineers
- > Real-time advanced technical support
- > Worldwide distribution for parts accessibility 24 x 7
- > State-of-the-art CRM System

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Direct: +41.21.821.20.20

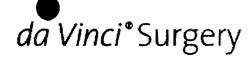
ISI 000835

Disclaimer: The U.S. FDA has cleared the da Vinci® Surgical System for use in general laparoscopic, general non-cardiovascular thoracoscopic and thoracoscopically-assisted cardiotomy procedures. Supporting clinical information describing the use of the da Vinci® Surgical System for specific surgical procedures may not currently be available or may be the subject of ongoing clinical investigations in the United States.

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Print Date: 05/2004-10.000

<sup>&</sup>lt;sup>1</sup>Is Technological Change in Medicine Worth It? Health Affairs - September/October 2001



· da Vinci

- da Vinci Procedures

Find a da Vinci Surgeon

da Vinci
Clinical Outcomes
da Vinci System
Features
Safety

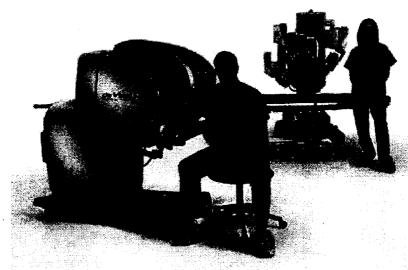
Surgeon Perspectives
Patient Experiences
FAQs
Glossary

Patient Seminar Important Safety Information The Enabling Technology:

# The da Vinci Surgical System

Only da Vinci overcomes the limitations of both traditional open surgery and conventional minimally invasive surgery.

The da Vinci System is a sophisticated robotic platform designed to expand the surgeon's capabilities – and for the first time – offer a minimally invasive option for major surgery.



The da Vinci®

S<sup>™</sup> Surgical System

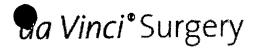
With da Vinci, small incisions are used to introduce miniaturized wristed instruments and a high-definition 3D camera. Seated comfortably at the da Vinci console, your surgeon views a magnified, high-resolution 3D image of the surgical site.

At the same time, state-of-the-art robotic and computer technologies scale, filter and seamlessly translate your surgeon's hand movements into precise micro-movements of the *da Vinci* instruments.

The System cannot be programmed, nor can it make decisions on its own. Rather, the *da Vinci* System requires that every surgical maneuver be performed with direct input from your surgeon.

To learn more about the da Vinci Surgical System, read about da Vinci Features.

While clinical studies support the effectiveness of the da Vincl® System when used in minimally invasive surgery, individual results may vary. Surgery with the da Vinci Surgical System may not be appropriate for every individual. Always ask your doctor about all treatment options, as well as their risks and benefits.



• da Vinci

da Vinci Procedures

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Information

# **Features**

The da Vinci Surgical System is the only commercially available technology that can provide the surgeon with the precision, dexterity and control of traditional open surgery, while only requiring 1-2 cm incisions.

da Vinci Surgical System consists of an ergonomically designed surgeon's console, a patient cart with four interactive robotic arms, a high-performance vision System and patented *EndoWrist* instruments.



da Vinci<sup>®</sup> EndoWrist<sup>®</sup> instrument



da Vinci Surgeon Console and Patient Cart

At the da Vinci console, your surgeon operates while seated comfortably, viewing a highly magnified 3D image of the body's interior. To operate, the surgeon uses master controls that work like forceps.

As your surgeon manipulates the controls, da Vinci responds to your surgeon's input in real time, translating his or her hand, wrist and finger movements into precise movements of miniaturized instruments at the patient-side cart.



da Vinci translates and refines your surgeon's hand movements.

da Vinci's patient cart holds up to three EndoWrist instruments and one 3D camera. To access the target anatomy, your surgeon introduces the precisly controlled EndoWrist instruments into the body through a series of dime-sized incisions. A broad range of instrument types are available to help your surgeon perform specialized surgical tasks with precision and control.

While clinical studies support the effectiveness of the da Vincl® System when used in minimally invasive surgery, individual results may vary. Surgery with the da Vinci Surgical System may not be appropriate for every individual. Always ask your doctor about all treatment options, as well as their risks and benefits.

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#### Company

#### **Products**

da Vinci Surgical System

Features and Benefits
3D Vision System

4th Arm

da Vinci S Surgical System

**EndoWrist Instruments** 

**FDA Clearance** 

Robotic-Assisted Surgery

**FAQ** 

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Physician Resources

**Patient Resources** 

**Customer Services** 



#### Cardiac

"The da Vinci System makes it possible to offer a wider range of patients a minimally invasive open-heart procedure to repair the mitral valve. This will allow more patients to benefit from both shorter hospital stays and reduced recovery times."

W. Randolph Chitwood, Jr. M.D. Professor and Chairman Department of Surgery Chief of Cardiothoracic Surgery East Carolina University School of Medicine

#### Urology

"As a trained surgical oncologist, da Vinci has allowed me to offer my patients a better cancer operation with improved clinical outcomes."

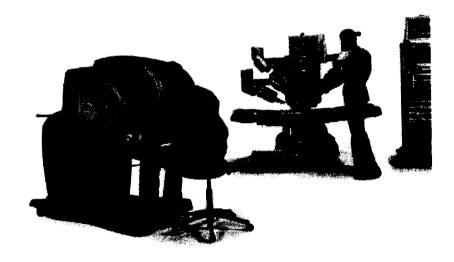
Thomas E. Ahlering, M.D. Associate Professor of Urology Director, Urological Oncology University of California Irvine Medical



Home Products da Vinci Surgical System

# The da Vinci® Surgical System

The *da Vinci* Surgical System consists of an ergonomically designed surge console, a patient-side cart with four interactive robotic arms, the high-performance *InSite*<sup>®</sup> Vision System and proprietary *EndoWrist*<sup>®</sup> Instrume Powered by state-of-the-art robotic technology, the surgeon's hand move scaled, filtered and seamlessly translated into precise movements of the Instruments. The net result: an intuitive interface with breakthrough surg capabilities.



Components of the da Vinci Surgical System

#### Surgeon Console

Using the da Vinci Surgical System, the surgeon operates while seate comfortably at a console viewing a 3-D image of the surgical field.

The surgeon's fingers grasp the master controls below the display, w and wrists naturally positioned relative to his or her eyes.

The system seamlessly translates the surgeon's hand, wrist and finge movements into precise, real-time movements of surgical instrument the patient.

Patient-side Cart

#### Center

#### **General Surgery**

"I can achieve superb clinical results in technically demanding operations such as Heller myotomy and Esophagectomy with fewer complications."

Santiago Horgan, M.D. Director of Minimally Invasive Surgery University of California, San Diego Provides either three or four robotic arms—two or three instrument a one endoscope arm—that execute the surgeon's commands.

The laparoscopic arms pivot at the 1-2 cm operating ports, eliminatin of the patient's body wall for leverage and minimizing tissue damage Supporting surgical team members assist in installing the proper inst prepare the 1-2 cm port in the patient and supervise the laparoscopi and tools being utilized.

#### **EndoWrist Instruments**

A full range of proprietary EndoWrist instruments is available to supp surgeon while operating.

The instruments are designed with seven degrees of motion that mim dexterity of the human hand and wrist.

Each instrument has a specific surgical mission such as clamping, sut tissue manipulation.

Quick-release levers speed instrument changes during surgical proce

#### Vision System

The Vision System, with high-resolution 3-D endoscope and image pr equipment, provides the true-to-life 3-D images of the operative field Operating images are enhanced, refined and optimized using image synchronizers, high-intensity illuminators and camera control units.

The da Vinci Surgical System is the only commercially available technolog can provide the surgeon with the intuitive control, range of motion, fine t manipulation capability and 3-D visualization characteristic of open surge simultaneously allowing the surgeon to work through tiny incisions typica minimally invasive surgery.

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3D Vision System

4th Arm

da Vinci S Surgical System

**EndoWrist Instruments** 

**FDA Clearance** 

Robotic-Assisted Surgery

**FAQ** 

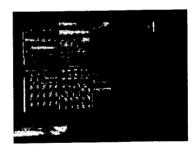
Hospital Resources

**Physician Resources** 

**Patient Resources** 

**Customer Services** 

#### **Clinical Validation**



#### Watch Video

"The System in my view really is a step towards the future. I think that surgery as a specialty has been behind other industries – the space industry, the automobile industry – in taking advantage of computer-assisted procedures and taking advantage of robotic types of technology. So in my view this system is the first clear, solid step forward in that direction."

Mark Talamini, M.D., F.A.C.S.



Home Products da Vinci Surgical System Features and Benefits

# Features and Benefits of the da Vinci® Surgical System

The da Vinci Surgical System enables physicians to perform surgery in a m never before experienced.

The da Vinci System seamlessly translates the surgeon's hand movement console instrument controls into corresponding micro-movements of instrument inside the patient.

Overall, the *da Vinci* System can provide the surgeon with better visualiza dexterity, precision and control than with open surgery, while enabling op through 1-2 cm incisions.

#### Superior Visualization

Revolutionary true-to-life 3-D vision Bright, crisp, high-resolution image Immersive view of the surgical field

The da Vinci System provides visualization of the target anatomy unlike t experienced, with natural depth-of-field, enhanced contrast and magnifica more accurate tissue identification and tissue layer differentiation.

Improved visualization also enables surgeons to perform delicate tissue h and dissection with added precision – even in confined spaces. This precis the surgeon to avoid trauma to surrounding structures and tissues such a neurovascular bundle located near the prostate.

#### **Enhanced Dexterity, Precision and Control**

Fingertip control of EndoWrist® Instruments

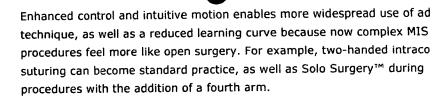
4 robotic arms enable Solo Surgery™

7 degrees of freedom - 90 degrees of articulation

Motion scaling and tremor reduction

The *da Vinci* System's tremor reduction, motion control and proprietary E instrumentation enhance ambidexterity for precision and control beyond t capabilities of the human hand. The surgeon can now move instruments w accuracy that the current definition of surgical precision is exceeded.

Professor of Surgery Chairman, Department of Surgery University of California, San Diego



Added instrument range-of-motion enhances access and safety while ope the confined space of the closed chest, abdomen or pelvis. This enables s to more accurately and easily perform complex surgical maneuvers throu "ports," eliminating the need for large, traumatic incisions.

#### **Superior Ergonomics**

Optimal alignment of visual and motor axes Comfortable seated posture

The da Vinci System is the only surgical system designed to allow surgeo operate while seated, which is not only more comfortable, but also may b clinically advantageous due to reduced surgeon fatigue.

The da Vinci System's design allows natural hand-eye alignment at the su console, which provides better ergonomics than traditional laparoscopic te

Since the *da Vinci* System's robotic arms hold the camera and instrument there is also potentially reduced abdominal wall torque, less patient traum surgeon assistance required and reduced surgeon fatigue.

Finally, with the robotic arms providing added mechanical strength, physi now offer a minimally invasive approach to higher-BMI patients.

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**Physician Resources** 

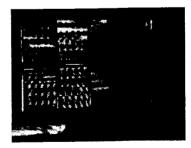
**Patient Resources** 

**Customer Services** 

#### **Further Information**

Video - See how it works

#### **Clinical Validation**



Watch Video

"The System in my view really is a step towards the future. I think that surgery as a specialty has been behind other industries - the space industry, the automobile industry - in taking advantage of computer-assisted procedures and taking



Home Products da Vinci Surgical System 3D Vision System

#### **3D Vision System**

The remarkable visualization provided by the *da Vinci*<sup>®</sup> Surgical System i the surgeon in an enhanced 3-D view of the operative field, providing dire hand-instrument alignment and natural depth perception necessary for pr manipulation of delicate tissue layers. A custom dual lens endoscope coup two 3-chip cameras take the surgeon "inside" the patient.

High-Resolution Image Processing
Intuitive Surgical's vision system includes a highresolution 3-D endoscope with two independent
vision channels linked to two high-resolution,
progressive scan color monitors. The system also
incorporates image processing equipment
comprised of high-performance video cameras,
specialized edge enhancement and noise reduction



The resulting high-resolution 3-D image is bright, crisp and clear, with no fatigue-inducing flicker or cross-fading as with sin monitor systems.

#### Visual Continuity

equipment.

Camera control, provided through the hand controls and foot pedals, provides near-seamless transition between views. Reposition the surgical camera in an instant with foot controls or zoom in, out, up, down, left and right by moving your hands in the desired direction. Repositioning your head at the console does not affect image quality as with other 3D display systems.



advantage of robotic types of technology. So in my view this system is the first clear, solid step forward in that direction."

Mark Talamini, M.D., F.A.C.S. Professor of Surgery Chairman, Department of Surgery University of California, San Diego

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#### **Further Information**

Video - See how it works



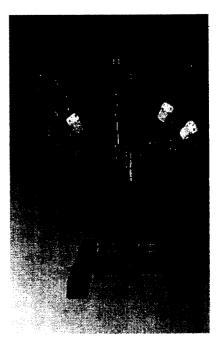
Home Products da Vinci Surgical System 4th Arm

#### 4th Arm

The da Vinci<sup>®</sup> Surgical System's patient-side cart holds up to four electromechanical arms that manipulate the instruments inside the patien instruments and camera attach easily to the arms, and are easily repositi either the console or patient-side surgeon. The addition of a 4th Arm allow  $Surgery^{TM}$ , a breakthrough in robotic-assisted MIS.

The first two arms, representing the surgeon's left and right hands, hold the *EndoWrist*® instruments. A third arm positions the endoscope, allowing the surgeon to easily change, move, zoom and rotate his or her field of vision from the console. This mobility eliminates the need for an assistant to hold the camera steady.

The optional 4th Arm extends surgical capabilities by enabling the surgeon to add a third EndoWrist instrument and perform additional tasks like applying countertraction and following running sutures. This optional



feature potentially eliminates the need for a patient-side surgeon.

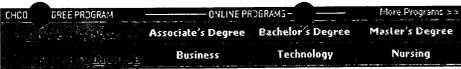
The surgeon can simultaneously control any two of the operating arms by a foot pedal underneath the surgeon's console. The 4th Arm is available a option on new da Vinci Surgical Systems and can be added as an upgrade existing *da Vinci* Systems.

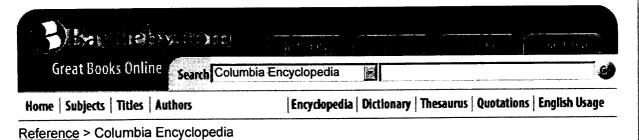
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The Greek phrase is enkuklios paideia, made up of enkuklios, "cyclical, periodic, ordinary," and paideia, "education," and meaning "general education."

"Encyclopedia." The American Heritage<sup>®</sup> Dictionary of the English Language, 4th ed. Houghton Mifflin, 2000.



http://www.bartleby.com/65/

# Columbia Encyclopedia

### Sixth Edition

Containing nearly 51,000 entries (marshalling six and one-half million words on a vast range of topics), and with more than 80,000 hypertext cross-references, the current Sixth Edition is among the most complete and up-to-date encyclopedias ever produced.

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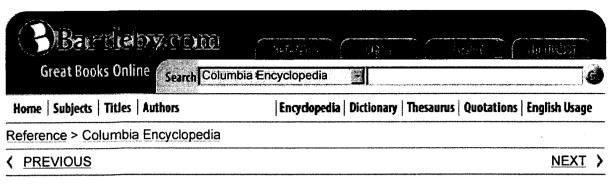
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# Leonardo da Vinci

(də vīn'chē, Ital. lāonār'dō dā vēn'chē) (KEY), 1452–1519, Italian painter, sculptor, architect, musician, engineer, and scientist, b. near Vinci, a hill village in Tuscany. The versatility and creative power of Leonardo mark him as a supreme example of Renaissance genius. He depicted in his drawings, with scientific precision and consummate artistry, subjects ranging from flying machines to caricatures; he also executed intricate anatomical studies of people, animals, and plants. The richness and originality of intellect expressed in his notebooks reveal one of the greatest minds of all time.

## Early Life and Work: Vinci and Florence

Leonardo was the illegitimate son of a Florentine notary and a peasant woman. Presumably he passed his childhood with his father's family in Vinci, where he developed an enduring interest in nature. Early sources describe his beauty, charm of manner, and precocious display of artistic talent.

In 1466 Leonardo moved to Florence, where he entered the workshop of <u>Verrocchio</u> and came into contact with such artists as <u>Botticelli</u>, <u>Ghirlandaio</u>, and <u>Lorenzo di Credi</u>. Early in his apprenticeship he painted an angel, and perhaps portions of the landscape, in Verrocchio's *Baptism of Christ* (Uffizi). In 1472 he was registered in the painters' guild. The culmination of Leonardo's art during his first period in Florence is the magnificent unfinished *Adoration of the Magi* (Uffizi) commissioned in 1481 by the monks of San Donato a Scopeto. In this work is revealed the integration of dramatic movement and chiaroscuro that characterizes the master's mature style.

#### Middle Life and Mature Work: Milan and Florence

Leonardo went to Milan c.1482 and remained at the court of Ludovico Sforza for 16

years. In this time he consisted the greater part of his *Trattato del Dittura* and the extensive notebooks that demonstrate the marvelous versatility and penetration of his genius. As court artist he also organized elaborate festivals. Severe plagues in 1484 and 1485 drew his attention to problems of town planning, an interest which was revived during his last years in France. Many drawings of plans and elevations for domed churches reflect a concern with architectural problems that must have been stimulated by contact with <u>Bramante</u> during these years. He worked c.1488 on a model for the tambour and dome of the cathedral at Milan. In 1490 he was employed with Francesco di Giorgio as consulting engineer on the restoration of the cathedral at Pavia and later on the cathedral at Piacenza.

In 1483, Leonardo, with his pupil Ambrogio de Predis, was commissioned to execute the famous *Madonna of the Rocks*. Two versions of the painting exist—one in the Louvre (1483–c.1486), another in the National Gallery, London (1483–1508). Leonardo's fresco of the *Last Supper* (Milan) was begun c.1495 and completed by 1498. This work is now badly damaged. Leonardo's own experiments with the fresco medium account in part for its disintegration, which was already noticed by 1517. Deterioration and repeated restorations had obliterated details and individual figures. Nonetheless, the composition and general disposition of the figures reveal a power of invention and a sublimity of spiritual content that mark the painting among the world's masterpieces. In 1978 a major (and controversial) restoration was begun, and in 1994–95 protective air-filtration and climate-control equipment were installed. The restoration was completed in 1999, leaving the fresco brightened considerably with details clarified, but also revealing the extensive loss of the original painting.

While at Ludovico's court Leonardo also worked on an equestrian monument to the duke's father, Francesco Sforza. The work was never cast, and the model, admired by his contemporaries, perished during the French invasion of 1499. In 1511 he undertook a similar work with the commission of an equestrian monument for Gian Giacomo Trivulzio. This work was also never completed and known only through drawings related to the project. After the fall (1499) of Ludovico Sforza, Leonardo left Milan and, following brief sojourns in Mantua and Venice, returned to Florence in 1500.

Back in Florence Leonardo engaged in much theoretical work in mathematics and pursued his anatomical studies at the hospital of Santa Maria Nuova. In 1502 he entered the service of Cesare Borgia as a military engineer. His engagement took him to central Italy to study swamp reclamation projects in Piombino and to tour the cities of Romagna. At Urbino he met Niccolò Machiavelli, who later became a close friend.

By 1503 he was back in Florence, where he was commissioned to execute the fresco of the battle of Anghiari. This work, like its companion piece assigned to Michelangelo, was never completed, and the cartoons were subsequently destroyed. The work exerted enormous influence on later artists, however, and some impression of the original may be had from anonymous copies in the Uffizi and Casa Horne (Florence), from an engraving of 1558 of Lorenzo Zacchia, and from a drawing by Rubens (Louvre). From about this time dates the celebrated *Mona Lisa* (Louvre), the portrait of the wife of a Florentine merchant.

In 1506, Leonardo returned to Milan, engaged by Charles d'Amboise in the name of the French king, Louis XII. Here he again served as architect and engineer. Gifted with a gargantuan curiosity concerning the physical world, he continued his scientific investigations, concerning himself with problems of geology, botany, hydraulics, and mechanics. In 1510–11 his interest in anatomy quickened considerably. At the same time he was active as painter and sculptor, had many pupils, and profoundly influenced

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the Milanese painters. A unting generally ascribed to this period the St. Anne, Mary, and the Child (Louvre), a work that exemplifies Leonardo's handling of sfumato—misty, subtle transitions in tone.

#### Late Life and Work: Rome and France

In 1513 Leonardo went to Rome, attracted by the patronage of the newly elected Medici pope, Leo X, and his brother Giuliano. Here he found the field dominated by Michelangelo and Raphael. The aging master was assigned to various architectural and engineering projects at the Vatican and received commissions for several paintings. It was perhaps in this period that he executed the enigmatic painting of the young St. John the Baptist (Louvre). Giuliano de' Medici left Rome in 1515 and died at Fiesole in the following year.

It is conjectured that Leonardo left with him, attached to his household, and that soon afterward he accepted an invitation of Francis I of France to settle at the castle of Cloux, near Amboise. Here the old master was left entirely free to pursue his own researches until his death. Although there is no certain record of his last years, he seems to have been active with festival decoration and to have been interested in a canal project. Notes and drawings ascribed to this late period show his continued interest in natural philosophy and experimental science.

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In 1965 two previously lost notebooks were discovered in the National Library of Spain, Madrid. The first is a vast work concerning technological principles; the second is an intellectual diary spanning 14 years. The lost notebooks were published as *The Madrid Codices* (1974).

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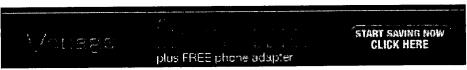
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# magnetic resonance imaging

(MRI), noninvasive diagnostic technique that uses nuclear <u>magnetic resonance</u> to produce cross-sectional images of organs and other internal body structures. The patient lies inside a large, hollow cylinder containing a strong electromagnet, which causes the nuclei of certain atoms in the body (especially those of hydrogen) to align magnetically. The patient is then subjected to radio waves, which cause the aligned nuclei to "flip"; when the radio waves are withdrawn the nuclei return to their original positions, emitting radio waves that are then detected by a receiver and translated into a two-dimensional picture by computer. Unhampered by bone and capable of producing images in a variety of planes, MRI is used in the diagnosis of brain tumors and disorders, spinal disorders, multiple sclerosis, and cardiovascular disease. The procedure is considered to be without risk, but the scanner may interfere with pacemakers, hearing aids, or other mechanical devices. Although the images are similar in many ways to those of <u>CAT scans</u>, they are obtained without X rays or other radiation, and generally provide more contrast between normal and abnormal tissue.

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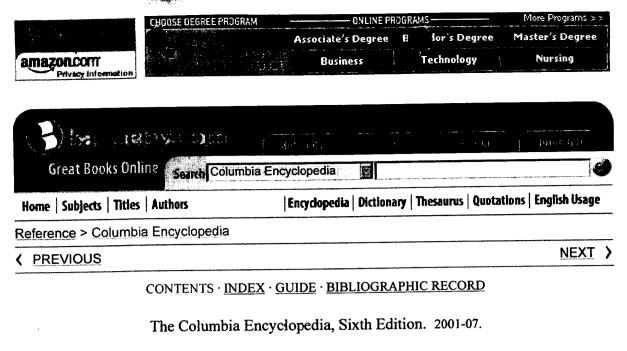
## CAT scan

(kat) (KEY) [computerized axial tomography], X-ray technique that allows relatively safe, painless, and rapid diagnosis in previously inaccessible areas of the body; also called CT scan. An X-ray tube, rotating around a specific area of the body, delivers an appropriate amount of X radiation for the tissue being studied and takes pictures of that part of the internal anatomy from different angles. More recent scanners have a stationary X-ray tube and use deflecting coils and special reflectors to position the X-ray beam. A computer program is then used to form a composite, readable image. CAT scanning has revolutionized medicine, especially neurology, by facilitating the diagnosis of brain and spinal cord disorders, cancer, and other conditions. Ultrafast CT, or electron beam CT, is able to take pictures in a tenth of a second. It is useful in creating images of moving parts, such as the heart, without blurring.

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# PET scan

(pet) (KEY) or **positron emission tomography** (poz itron imish on tomogrape) (KEY), a medical imaging technique that monitors metabolic, or biochemical, activity in the brain and other organs by tracking the movement and concentration of a radioactive tracer injected into the bloodstream. The technique uses special computerized imaging equipment and rings of detectors surrounding the patient to record gamma radiation produced when positrons (positively charged particles) emitted by the tracer collide with electrons.

PET scans are especially valuable in imaging the brain. They are used in medicine to diagnose brain tumors and strokes, and to locate the origins of epileptic activity; in psychiatry to examine brain function in <u>schizophrenia</u>, <u>bipolar disorder</u>, and other mental illnesses; and in neuropsychology to study such brain functions and capabilities as speech, reading, memory, and dreaming.

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